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NOAH FELDMAN

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Martin Peretz on the Newsweek Retraction

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THE END OF WAR?

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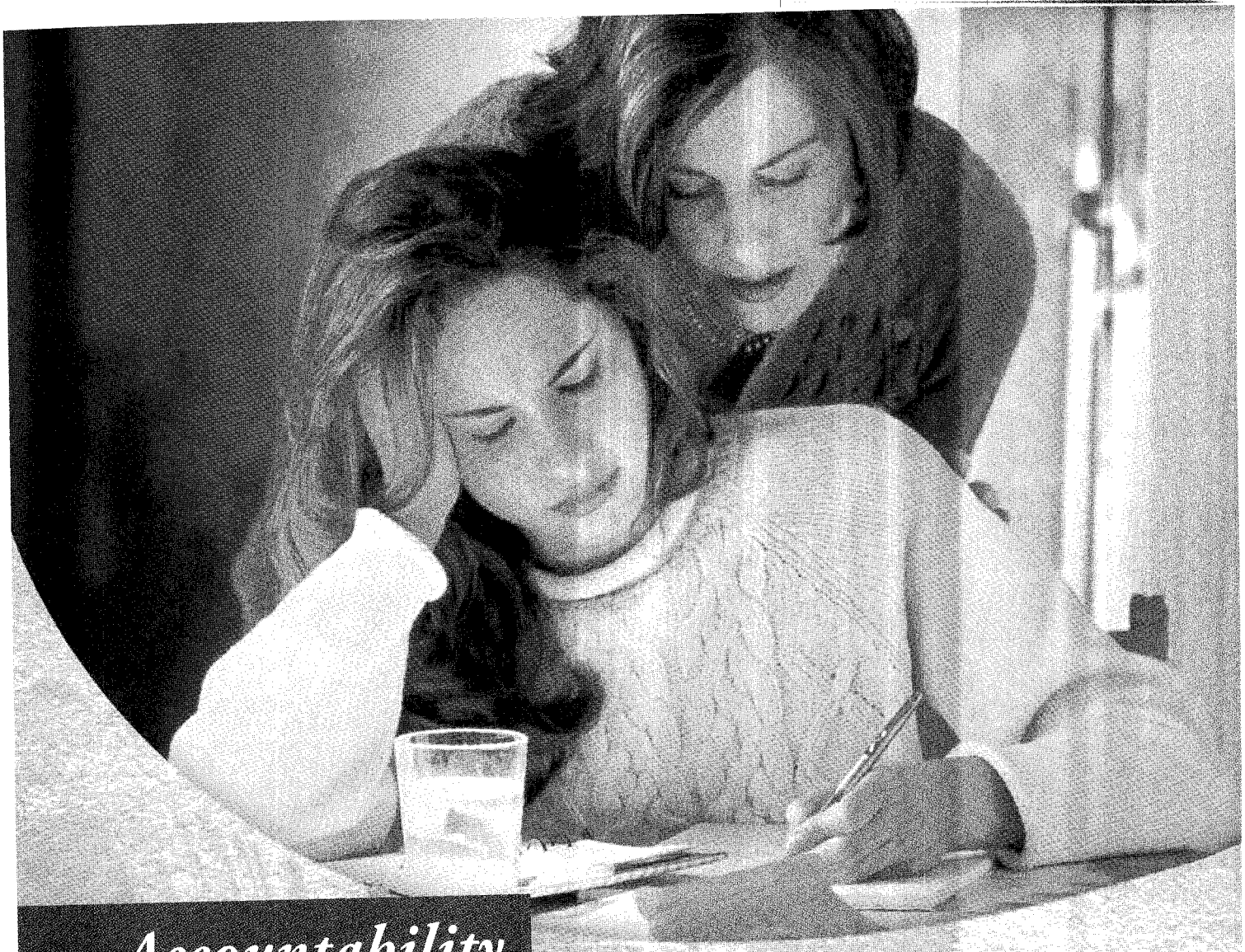

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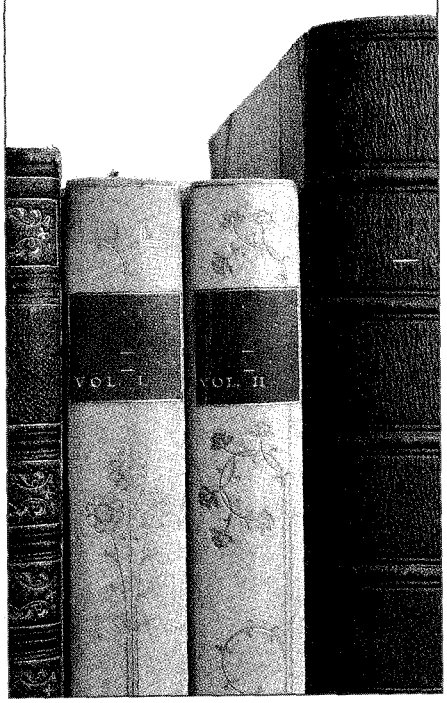
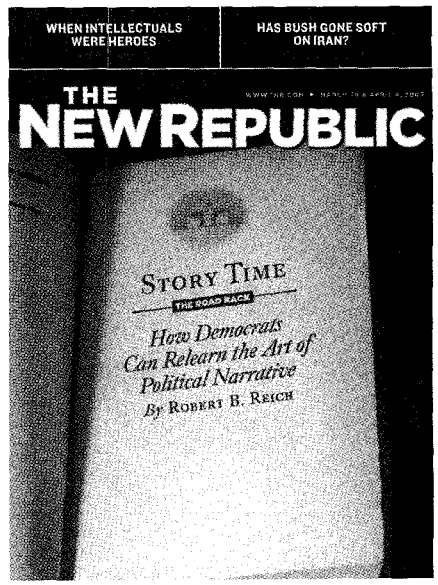


CORRESPONDENCE

HAPPY ENDING

ROBERT REICH HAS SOME COGENT observations about how the Democrats need to define their narrative to appeal to the broader electorate ("Story Time," March 28 & April 4). The only problem is that many Democrats don't believe the stories and, therefore, aren't likely to be persuasive in shaping Democratic themes around them. In particular, The Triumphant Individual is a story that most Americans identify with but many on the left would dismiss as a self-serving myth. Progressives are unlikely to consider this to be a story they want to tell, because, to many progressives, the United States was built on the backs of genocide and slave labor. Moreover, they decry the focus on the heroic individual. The same pretty much goes for the other stories as well. Reich correctly notes the role of the New Left in changing how Democrats tell their stories. He is also correct that Democrats must tell stories that match their convictions and that strike Americans as true. But they also must convince Americans that they believe what they are saying. Too many on the left do not believe the narratives they are telling, and Americans sense that. Unless Democrats truly believe that the United States is a story worth telling, all the strategy in the world will not help.

MARC SCHNEIDER
Rockville, Maryland


WHEN INTELLECTUALS WERE HEROES
HAS BUSH GONE SOFT ON IRAN?
THE NEW REPUBLIC
STORY TIME
THE ROAD RACE
How Democrats Can Relearn the Art of Political Narrative
By ROBERT B. REICH

STATE OF DENIAL

MARTIN PERETZ'S SUGGESTION that Kofi Annan is a "genocide-denier" is way off target ("Memory Palace," April 18). Annan has spoken frequently about the genocide in Rwanda—including speeches in Rwanda itself—and expressed deep regret at the U.N.'s failure to act swiftly and decisively. Yet it was the Security Council that decided to reduce the size of the peacekeeping force in Rwanda when the genocide started. Neither the United States nor any other major power was willing to send extra troops. Annan, as head of the U.N. peacekeeping department, contacted more than 80 governments asking for troops, but none was willing to supply them. Similarly, Annan is not "refusing to act" today in Darfur. He has repeatedly pressed for more effective action, including an expanded African Union force with much stronger international support. Last month, the Security Council at last responded to his prodding by imposing sanctions on people who commit violations of international law in Darfur and, in a historic first, referring the situation to the International Criminal Court. "If there is one legacy I would most wish to leave to my successors, it is an organization both better equipped to prevent genocide

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and able to act decisively to stop it when prevention fails," Annan said last year. He has no troops of his own to send, and no prosecutor whom he can instruct. What he can do, and is doing, is to use his moral authority to increase the pressure on governments to act more decisively.

EDWARD MORTIMER
Director of Communications
Office of the Secretary-General
United Nations
New York, New York

MARTIN PERETZ RESPONDS:
Edward Mortimer evades the core of the genocide issue. The Genocide Convention ordains that the international convention not only punish genocide, but also prevent it. In no instance has it even tried. Kofi Annan may have spoken about genocide in Rwanda after the fact. But, as head of the U.N. peacekeeping department, he failed utterly to recognize the genocidal war that was unfolding there. Mortimer does not refer to Biafra because Annan's more-than-passive role in the mass murder at Srebrenica is just too much for even a skilled flack to handle. And, as for the ongoing and systematic killing of blacks in Darfur, what it proves is that Annan is utterly without moral authority, just like the bankrupt United Nations.

MISJUDGED

IT IS DIFFICULT TO UNDERSTAND THE editor's formulation of the Schiavo case as an antinomian right against a legalistic left ("What Schiavo Taught," April 11). More probably, it represents a law-focused right against an antinomian judiciary. Florida law provided that, in the absence of clear and convincing evidence of the wishes of the disabled, the court must presume in favor of life. Careful reading of the evidence makes it most difficult to believe that a judge committed to enforcing that law could possibly have found convincing evidence that Terri Schiavo wished to be starved to death. When the legislative representatives of the people of Florida voted to create a clear legal basis for preserving her life, the courts suddenly found a dubious constitutional basis for overturning the law. Who did you say was antinomian?

MARK PRESS
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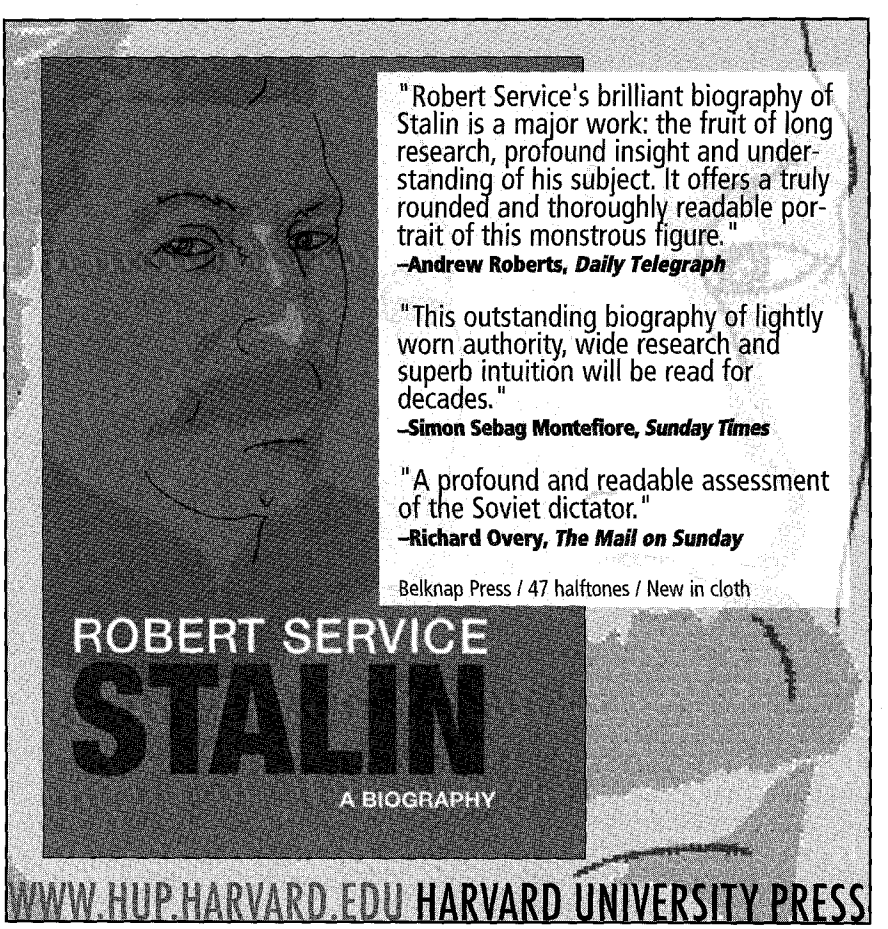
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Norm!

TRB FROM WASHINGTON

THE EMERGING NARRATIVE on John Bolton's now-likely confirmation as U.N. ambassador has produced an unexpected good guy: Ohio Senator George Voinovich. According to the accepted story line, a host of Republican Senate moderates sat shifty-eyed while Bolton's nomination rolled through the Senate; Voinovich at least had the presence of mind to bloody Bolton's nose along the way. The editors of *The New York Times* wrote approvingly of Voinovich's now-famous anti-Bolton soliloquy last week. Chris Dodd of Connecticut mused about "what a privilege it was to serve with [Voinovich]" and vowed to commemorate the speech for his young daughters as an example of a "senatorial moment."

That's one reading, I suppose. The other is that, by elevating Bolton's nomination to the level of grand moral principle—"Mr. Chairman, it is my opinion that John Bolton is the poster child of what someone in the diplomatic corps should not be," Voinovich thundered last Thursday—and then failing to follow through when he could have blocked the nomination, he damages the very principles he claims to espouse.

As it happens, this is not the first time Voinovich has worked himself up into moral high dudgeon only to back off under pressure from the White House. Voinovich came to the Senate in 1999 proclaiming his determination to restore an ethic of budgetary responsibility. And, for his first two years, he resisted expensive tax cuts favored by the GOP. But, since Bill Clinton had vowed to veto these bills, Voinovich's vote carried no political cost. Then, right around the time George W. Bush entered office, Voinovich's rhetoric began to diverge conspicuously from his actions.

This was particularly evident in 2002, when a set of budget rules that had been fabulously successful at controlling deficits in the 1990s was about to expire. The pay-as-you-go rule, as it is known, requires new tax cuts or spending to be paid for by savings elsewhere in the budget. At the time, Voinovich seemed genuinely worried about its expiration. "As a senator who came here to bring some fiscal discipline to this place, I am just dismayed by our complete lack of fiscal responsibility," he told the *Baltimore Sun*. But, when he finally got the opportunity to vote to reimpose the rule in 2004, Voinovich balked. Other GOP deficit hawks, such as John McCain, Olympia Snowe, and Lincoln Chafee, had no such reservations.

Voinovich also passed on a chance to impose fiscal discipline in 2003, when he turned out to be the key swing vote on a package of tax cuts estimated to cost roughly $800 billion over ten years. But he never stopped stressing the importance of the principle. "We're on the edge of a fiscal crisis in this country if we keep going the way we are," Voinovich said late that March. He claimed he couldn't abide a tax cut that would cost a dollar more than $350 billion, and he co-signed a letter to this effect addressed to Tom Daschle and Bill Frist. When asked on "Meet the Press" in the weeks before the final vote whether $350 billion was his absolute bottom line, Voinovich replied, "You got it, and anybody that knows George Voinovich knows that, when I say something, I mean it." In response, Senate GOP leaders simply arranged for some of the bill's provisions to expire within six years—thereby lowering the legislation's ten-year price tag—even though they had every intention of renewing the provisions once they expired. This is the legislative equivalent of crossing out $800 billion and writing $350 billion next to it, but it was sufficient to win Voinovich's vote.

When Voinovich piped up in the Foreign Relations Committee last month and claimed that his concerns justified delaying a vote on Bolton's nomination, it seemed to be a rare case of the senator measuring his rhetoric. Voinovich was arguing for more careful deliberation without committing himself to a position he might later undermine. But that sense of proportion vanished when Voinovich shared the product of his deliberations—a scathing indictment of Bolton—then announced the terms of an agreement whereby he would send the nomination to its near-certain approval.

Voinovich is apparently a great believer in norms. He believes in the norm that a government should live within its means. He believes that the executive branch should be transparent in its dealings with Congress and the public. And he believes strongly in the Senate's "advice and consent" responsibilities. (Voinovich actually chided Republicans for not permitting Democrats to explore allegations against Bolton.) But Voinovich doesn't understand the difference between invoking a norm and defending it. Had he stressed the importance of the Senate's advisory role, then concluded from his deliberations that Bolton was acceptable, the norm would have remained intact. The norm would have even survived had he never mentioned it and voted for Bolton.

Either scenario might have emboldened the White House on a future nomination, but not to the point of dismissing the Senate altogether. The fact that a senator grudgingly assents today doesn't mean he won't object tomorrow. Thanks to Voinovich's shenanigans, however, the White House will be increasingly dismissive of congressional grumbling. Voinovich has demonstrated that, even when the Senate does object, it doesn't particularly matter.

That would be unfortunate in any context. But the effect is particularly insidious with this administration. That's because, under Bush, the GOP's chief political tactic has been to identify norms that can be trampled without consequence—and then to promptly trample them. So, for example, Republicans routinely pass legislation in the House and Senate only to significantly change it in a conference committee. Or they unveil complicated legislation just hours before it must be voted on, giving Democrats almost no opportunity to read it. Or, to take an example with which Voinovich is intimately familiar, they announce a reasonable-sounding official price tag for legislation that bears no relationship to its actual cost.

George Voinovich proved himself to be an enabler of the administration's worst excesses when he caved on Bolton last Thursday. A senatorial moment, perhaps. Just not the kind you'd share with your children.

NOAM SCHEIBER

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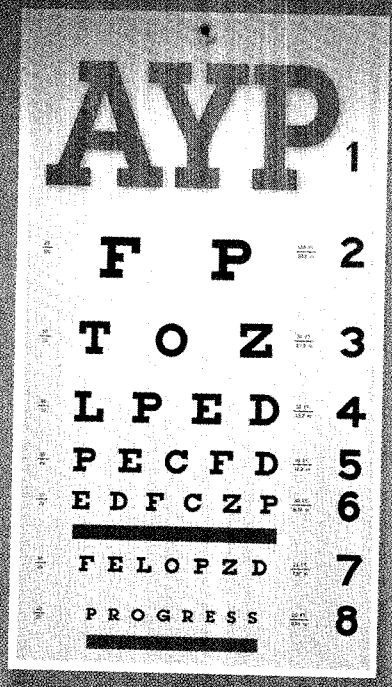
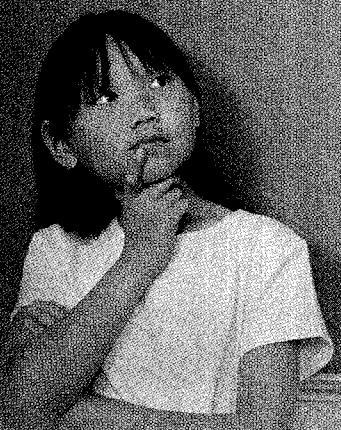
It's clear to see. Three letters are making a shambles of the *No Child Left Behind* law.





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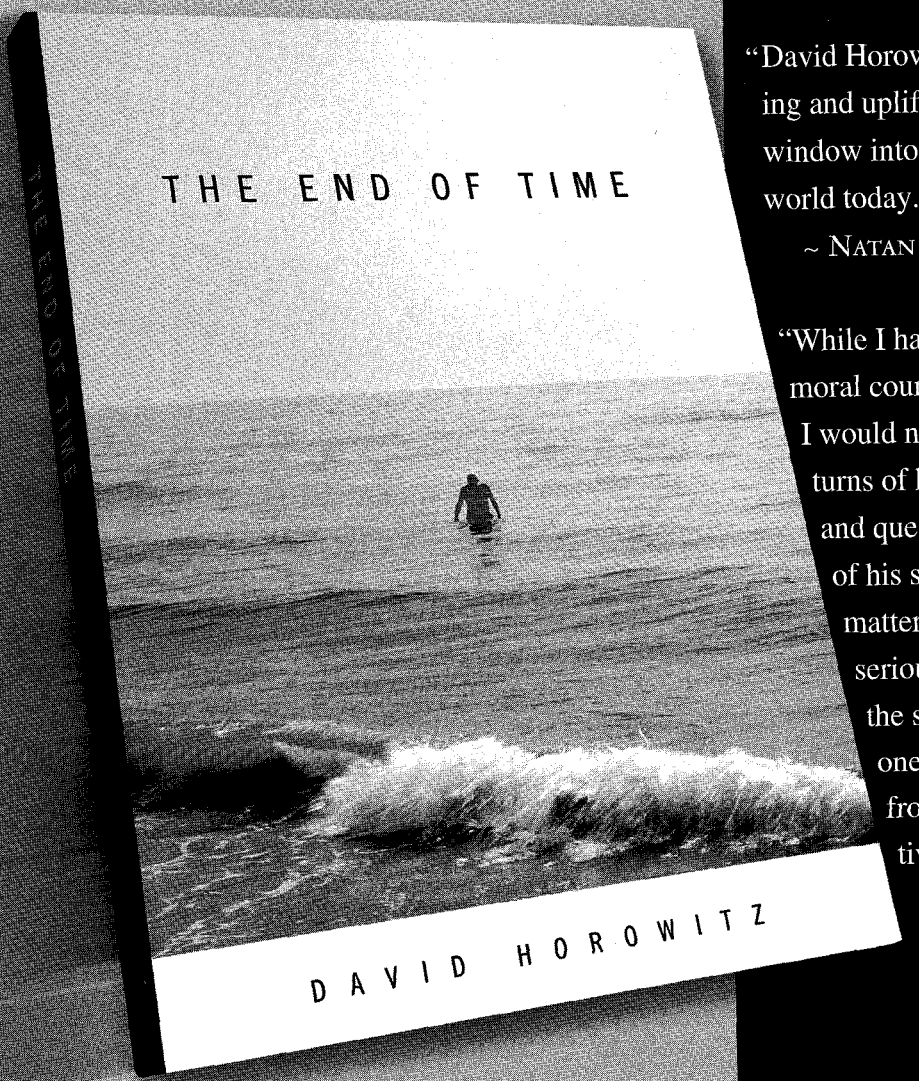

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Devil We Know

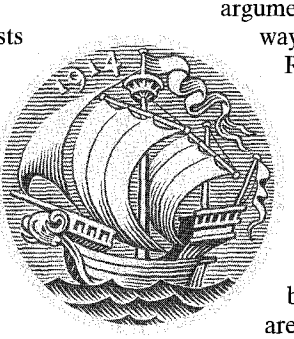
IT MAY TAKE a while to sort out all the details, but we do know some of what happened last week in Andijon, Uzbekistan: Government soldiers shot and killed hundreds of unarmed protesters, who had assembled after rebels freed 2,000 prisoners from a local jail. "They shot us like rabbits," an Uzbeki told Reuters, "and chased and finished us off like dogs in side streets and alleys."

We also know that the Bush administration's immediate response was grotesque. "We are concerned about the outbreak of violence," White House spokesbot Scott McClellan said, "particularly by some members of a terrorist organization that were freed from prison." It was three days before the administration shifted the balance of its criticism to Uzbekistan's government, saying that the slaying of innocents was "deeply disturbing."

The roots of the crisis are not complicated. Uzbekistan's dictator, Islam Karimov, does not tolerate dissent. A former communist apparatchik turned pro-Western kleptocrat, Karimov has tortured and killed his way to the top of the heap of the world's human rights abusers. His medieval regime notoriously suffocates prisoners with chlorine-filled gas masks and has boiled at least two opponents in cauldrons of water. He has used a real but exaggerated threat from an Al Qaeda–affiliated terrorist organization, the Islamic Movement of Uzbekistan (IMU), as a cudgel to destroy all opposition.

Andijon, a city of 300,000, sits in the Ferghana Valley in the eastern-most corner of Uzbekistan, a region that has suffered disproportionately from Karimov's economic policies. Cotton is the lifeblood of the Uzbek economy, but farmers are forced to sell the so-called "white gold" to the regime for pittances, while the government resells it for massive profits that sustain Karimov's rule. In Ferghana, citizens sought to counter this crushing economic system with free enterprise—bazaars, local banks, informal trade with neighboring Kyrgyzstan—which Karimov has sought to eliminate, to the anger of Valley residents. That explains why the criminal case of 23 Andijon businessmen—accused of extremism and membership in an outlawed Islamic group—morphed from just another government show trial into a mass uprising. Karimov claims the men—who make up the backbone of Andijon's middle class—are Muslim radicals, but, for the people in Andijon, the men were a source of much-needed jobs.

Early this month, protests outside the court where the businessmen were being tried became regular, and, last Thursday night, rebels of uncertain origin stormed their prison, which was emptied of its prisoners, some of whom, Karimov's government alleges, were members of the IMU. What followed the prison break was an apparently spontaneous protest in Andijon's town square. Karimov claims that the crowd was a threatening group of bandits and Islamic fundamentalists, but most (if not all) were actually civilians demonstrating against Karimov's corrupt rule and severe economic policies. One of the few foreign journalists on the scene reported the following: "They are shouting social slogans, I would like to stress, not Islamic ones. They say that things are bad, ask why the authorities have brought the people to live in such misery."



Soon after, Karimov's soldiers stormed the square in armored vehicles and fired at unarmed protesters, including women and children. The United States thinks about 300 were killed, while an Uzbek opposition group claims at least 745.

The Bush administration's reasons for keeping Karimov as a strategic partner are wearing thin. We needed Karimov after September 11, when he offered us an old Soviet airbase to stage operations against the Taliban. But we now have the sprawling Bagram installation in Afghanistan. Others argue that Karimov is a secular bulwark against Islamists in Central Asia's most populous state. But Bush himself has sworn that privileging stability over the uncertainty of freedom is a strategy doomed to failure. Moreover, support for Karimov is counterproductive, since he seems bent on driving Uzbekistan's Muslim fence-sitters into the Islamists' camp. Another argument sees Uzbekistan as a way to check Chinese and Russian influence in the region and to secure Central Asian oil and gas reserves for the West. But Karimov needs us more than we need him. Losing the United States as a military partner would be a severe blow, and there are millions of dollars in U.S. aid that Bush could rescind with the stroke of a pen.

We ought to start wielding these sticks. After all, the true test of Bush's commitment to democracy is whether he is willing to push for it even in cases when it might be against our short-term self-interest. In that sense, Uzbekistan is the first real test of Bush's commitment to "end tyranny in the world." ■

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NOTEBOOK

ETHICALLY CHALLENGED: BOB NEY . . . 'BONEHEADED': KWEISI MFUME

NOT MERELY UNFORTUNATE

WHATEVER YOU THINK OF *Newsweek*'s blunder, you can hardly applaud the behavior of Republican Representative Bob Ney of Ohio, who appeared on the House floor this week to issue a fiery denunciation of *Newsweek*'s "fraud."

Ney is a dubious messenger, to say the least. The House Administration Committee chairman is a notorious figure on Capitol Hill of late, thanks to his unseemly relationship with the nightmare lobbyist Jack Abramoff, whom he most famously aided by trying to insert a provision benefiting a Texas Indian tribe into a 2002 election reform bill. Abramoff's publicly released e-mails strongly suggest that Ney's help was tied to $32,000 in campaign donations from the tribe, as well as a lavish golfing junket to Scotland that Abramoff arranged for him with money that appears to have been laundered through a front group.

Ney also gave at least two floor speeches that helped Abramoff profit from a shady business deal down in Florida—awfully far from Ney's rural Ohio district. The charges are serious enough that Ney—who denies any wrongdoing and claims he was "duped" by Abramoff—has hired a criminal lawyer. (Another choice Ney factoid: Last year, he returned from London blithely claiming that he had placed a $100 bet in a casino there and turned it into $34,000—which he conveniently used to cover his then-crippling credit card debts. Pass the Lysol, please!)

Amazingly, Ney betrays no hint of shame. Last week, he accused Democratic Representative Rahm Emanuel of proposing a lobbying-reform bill for partisan reasons without noting that he himself is a proximate cause for such a bill. And, on Monday, Ney had the gall to stand on the House floor and declare that "*Newsweek*'s behavior is not merely unfortunate. It is criminal."

Bob Ney

He'd better hope the same can't be said of him. We're not so sure.

WHEN PORK FLIES

YOU KNOW TIMES ARE BLEAK WHEN Donald Rumsfeld is on the side of good sense. According to an item in *The New York Times* this week, the defense secretary was keen to halt the planned construction of the C-130J transport plane after two Pentagon studies revealed that it was, well, a huge dud. Among the problems cited in the reports: The plane can't drop heavy equipment, perform combat search-and-rescue missions, or operate in cold weather. On top of all that, its design is so different from previous models that pilots and crew members would have to undergo new (and expensive) retraining.

But, when Rumsfeld tried to put the kibosh on the program, Congress pitched a fit. Legislators insisted that the plane's problems would be fixed (just in time, too, to prevent the possible loss of lucrative construction contracts for their states). And, last week, the defense secretary finally caved to Congress, noting the high cost of canceling the project. We hate to see a good man brought low.

BETTER THAN SEX

THE RELIGIOUS RIGHT HAS LONG opposed condom distribution on the fallacious grounds that the availability of contraception encourages premarital sex. Never mind that condoms limit the spread of HIV and other sexually transmitted diseases (STDs) and prevent unwanted pregnancies (thus reducing the need for abortions, a cause these same right-wingers ought to applaud). Now conservative Christian groups are preparing to battle a new scourge: Vaccines that could prevent more than 200,000 women from dying of cervical cancer each year (including 5,000 here in the United States).

The vaccines, which have been developed by Merck and GlaxoSmithKline, immunize against infection with human papillomavirus (HPV), a common STD that is responsible for the vast majority of cervical cancer cases. But "abstinence only" advocates love HPV. That's because the virus can be spread by skin-to-skin contact other than intercourse, meaning that condoms are less effective at preventing HPV infection than blocking the spread of other STDs. Abstinence groups don't want a vaccine to eliminate this fear factor. "Giving the HPV vaccine to young women could be potentially harmful because they may see it as a license to engage in premarital sex," says Bridget Maher of the Family Research Council, a Christian lobby that plans to fight a Merck campaign to make HPV vaccination mandatory for all girls by the time they enter junior high. Of course, absolutely no evidence supports Maher's claim. But there's plenty of evidence that an HPV vaccine will prevent thousands of needless deaths. Now what was that about a culture of life?

DAVID COWLES

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DONNA'S MAN FOR THE JOB

A FEW WEEKS AGO IN THIS SPACE (April 11), we took exception to Democratic strategist Donna Brazile's insistence that her party quickly unify behind NAACP Chairman Kweisi Mfume as its candidate in next year's race for an open Maryland Senate seat. Brazile used her weekly *Roll Call* column to warn off other would-be contenders with the vow that "many black and progressive voters intend to claim this seat for one of their own." Well, this week, Mfume held the first in what he says will be a series of press conferences to deal with allegations that he offered promotions and raises to women at the NAACP with whom he or his son had affairs, and harassed or punished women who spurned their advances. When the allegations first surfaced last month, Mfume categorically denied them; this week, he modified his story to admit one "bonehead-ed" affair with a staffer. Who knows what he'll cop to next week? Even before such charges were flying, we were skeptical that, whatever his other merits, a man who has fathered five children out of wedlock and been arrested several times in his youth is the Democrats' strongest candidate. Now that he's already in damage-control mode, here's hoping the black and progressive voters for whom Brazile claims to speak can see beyond narrow interest-group politics.

DEPARTMENT OF CORRECTIONS

NOAM SCHEIBER'S ARTICLE "Wooden Frame" (May 23) reported that the Nathan Cummings Foundation awarded George Lakoff one-year grants of $125,000 and $95,000 in late 2002 and 2003. In fact, the grants were awarded to the Rockridge Institute, where Lakoff is a senior fellow, primarily to make Lakoff available to other Cummings Foundation grantees. In addition, the amount of the 2002 grant was $100,000, not $125,000. ■

TNR.commentary

&c.

T.A. FRANK

IMMIGRATION AND THE GOP: Until I attended a Conservative Political Action Committee conference a few months ago, I had no idea how divisive an issue immigration was among Republicans. At one panel, boos and catcalls followed any panelist who advocated anything less than instant deportation. May 17's *Wall Street Journal* carried an article by John Harwood asserting that immigration "could split President Bush's governing coalition from within." That doesn't seem like an exaggeration. At least Bush hasn't attempted to play into this strain of intolerance. Meanwhile, people like John McCain are now floating concrete ideas:

> [McCain's] proposal ... [would create] an "essential worker" H-5A visa for immigrants willing to fill low-skilled jobs. ... Applicants would have to show that a job is waiting for them, pay a $500 fee, and clear security and medical checks.
>
> Undocumented workers already here could register for a temporary H-5B visa that would be good for as long as six years. To qualify for permanent legal status, they would have to clear security checks, pay back taxes and a $2,000 fee, and learn English. Hospitals caring for illegal immigrants would be eligible for federal reimbursement.

At least this isn't inhumane. On the other hand, no matter how they're arranged, guest-worker programs rarely avoid being oppressive. If your permission to be in the country hinges on a specific job, then you must tolerate any drawback to that job—even abuses—or leave the country. Unlike a full citizen, you can't shop around for something better. This easily leads to arrangements that resemble forced labor—a plight with which any reluctant guest-blogger would sympathize.

OWEN JUSTICE: So far, I'm not a conservative or a judge (maybe just poor planning). If I were, however, and if Attorney General Alberto Gonzales were to have found one of my judicial rulings so tendentiously right-wing as to constitute "an unconscionable act of judicial activism," I'd feel grimly satisfied. So congratulations to Priscilla Owen for that. Of course, Gonzales, who made this statement years ago while serving with Owen on the Texas Supreme Court, is backpedaling now, as *The New York Times* explained in a story on May 16.

Meanwhile, the article is a useful reminder of what sort of nominees Democrats are trying to block:

> Owen was criticized at her first confirmation hearing by senators who said she took a year and a half to issue an opinion in a case involving a young man injured in a truck accident. The man, who was on a respirator, died when the family could not afford nursing care because the appeal delayed the multimillion-dollar verdict. In her response at the time, Owen told the senators, "There are a lot of cases that tug at the heartstrings, but I have to follow the law."

Of course. So, while you might be tempted to tug at Owen's heartstrings, remember that she is likely to tug back. Senator Richard Durbin noted this sustained willingness to "follow the law" during Owen's confirmation hearings in 2002:

> DURBIN: I often wondered how a court could come down, as you did, writing a majority opinion here in [*Provident American* v. *Castenada*] ... involving coverage on a health-insurance plan where, frankly, the insurance company decided to try to find anything it could in its policy to avoid paying for a critical surgery that was needed by this family. ...
>
> OWEN: Thank you, senator, I really do appreciate the opportunity, because this case was not about coverage. They were covered. The only dispute here was bad faith. ... The policy had a 30-day waiting period, and they didn't disclose to the insurance company anything about the hereditary disease. Three days after—or maybe it was two—
>
> DURBIN: Three.
>
> OWEN: Three days after the 30 days had run, they took their children to a physician who, on the spot, diagnosed this hereditary disease and removed their—I believe it was their spleen. ... But they were covered. That was not the issue.
>
> DURBIN: ... I think we are carping on a trifle here as to whether they're covered. The fact was the insurance company approved the surgery, did they not, before it took place?
>
> OWEN: Yes.
>
> DURBIN: And the fact is the insurance company then refused to pay. ... I have represented insurance companies. I have represented plaintiffs. You were the answer to the insurance company's prayer if you would buy this argument, if you would ... turn on a family that is facing this kind of peril and make this kind of interpretation.

Then again, who says that heartstrings can't also be tugged at by insurance companies?

TNR REPORTER-RESEARCHER T.A. FRANK IS CURRENTLY GUEST-BLOGGING &C. READ MORE OF HIS POSTS AND OTHER TNR ONLINE CONTENT AT TNR.COM

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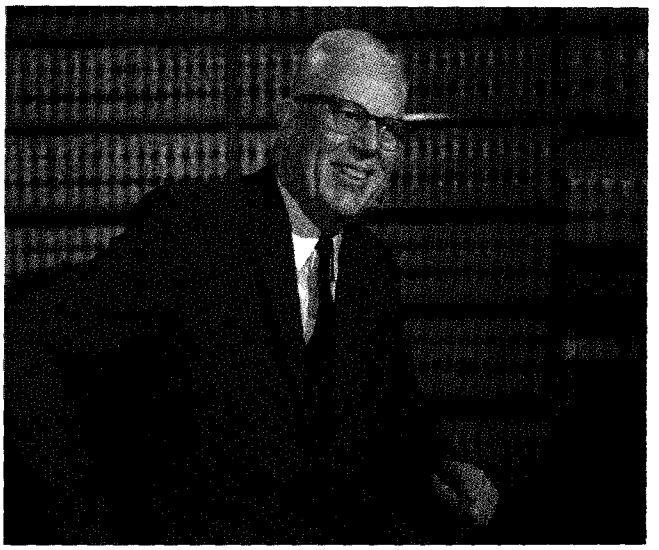
The GOP v. the judiciary.

Out of Order

BY JEFFREY ROSEN



Earl Warren's Supreme Court drew congressional ire.

AS AN EXPLOSIVE showdown over judicial nominations approaches, Republicans are depicting themselves as champions of the will of the majority. "Only in the United States Senate could it be considered a devastating option to allow a vote. Most places call that democracy," Senate Majority Leader Bill Frist said in a speech to conservative Christian groups on April 24.

To Republicans, the Democratic filibuster of seven of President Bush's judicial nominees is not just an undemocratic tactic; it is an undemocratic tactic being used to protect an undemocratic institution, the U.S. judiciary. In their fight against the bench, too, Republicans depict themselves as avatars of popular will. The courts, in the words of House Majority Leader Tom DeLay, have "run amok." According to James Dobson, president of the conservative Christian group Focus on the Family, the Supreme Court justices are "unelected and unaccountable and arrogant and imperious and determined to redesign the culture according to their own biases and values, and they're out of control." The only solution, DeLay told a recent conference of Christian conservatives, is for Republicans to "reassert Congress's constitutional authority over the courts." Both the anger over the filibuster of Bush's judicial nominees and the demand for more conservative judges are thus justified in the name of public opinion.

In their attacks on the courts and on Senate Democrats, however, it is congressional Republicans who have run amok. Polls show that more than two-thirds of Americans oppose eliminating the filibuster. Furthermore, the Supreme Court is hardly the unaccountable institution that Dobson and his congressional allies suggest. Instead, the Court has carefully followed the election returns, siding with economic conservatives and against social conservatives, just like the country as a whole. At this odd moment in history, the courts, in fact, are doing a better job of reflecting the wishes of a majority of the country than Congress—and that is dangerously undemocratic.

IT'S EASY TO criticize the arguments of both Republicans and Democrats in the filibuster battle as opportunistic. Democrats often speak as if the threat of the filibuster has long been a part of Supreme Court nominations, but in fact, it was only used once—to derail the nomination of Abe Fortas as chief justice in 1968. Moreover, nine of the Democrats now defending the filibuster—including Senators John Kerry, Ted Kennedy, and Joe Lieberman—supported its elimination during the Clinton years. Republicans, for their part, were perfectly happy to filibuster two of President Clinton's executive nominees, and they resorted to other procedural maneuvers to deny Clinton's judicial nominees an up-or-down vote.

But far more significant than these political flip-flops is the fact that the House and Senate are no longer reliable representatives of most Americans' constitutional views. This is a dramatic and important shift. For most of U.S. history, all of the great constitutional issues—from the meaning of free speech to the meaning of equality—were debated in the House and Senate, which reflected the views of democratic majorities more precisely than the president or the courts. But, as political scientists Jacob Hacker and Paul Pierson argue in their forthcoming book, *Off Center: George W. Bush, Tax Cuts, and the Erosion of Democracy*, recent changes have made Congress an unreliable representative of majority will. Now that incumbents, thanks to partisan gerrymandering, are virtually assured reelection, politicians have a strong incentive to pander to their most reliable supporters—including partisan activists and high-stakes donors—in order to avoid the primary challenges that now decide elections. This means that representatives and senators can increasingly ignore the preferences of the moderate majority without suffering electoral consequences.

Of course, if Republicans eliminate the filibuster and Bush then succumbs to demands from the religious right to nominate radical Supreme Court nominees—such as Janice Rogers Brown, whose appellate nomination was blocked by Democrats—a majority of the country might become alarmed. After all, in the Schiavo case, which has, more than any single event, rallied right-wing opposition to the judiciary, two-thirds of the public opposed Congress's intervention in an ongoing judicial proceeding. But that doesn't seem to matter to congressional Republicans, who are in the thrall of their base: interest groups on the extreme right who care intensely about judicial nominations because their socially

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conservative views are not shared by a majority of Americans. Having ostensibly played an important role in Bush's reelection, these groups feel entitled to political payback.

Unlike the Republican base, however, a majority of the American people agree with the Supreme Court on most important issues. In the 1980s and 1990s, as conservatives passed tax cuts and scaled back the size of government, the Court modestly followed their lead, striking down laws on the margins of the post–New Deal regulatory state, such as the Gun-Free School Zones Act of 1990. And, as the public sided with liberals in the culture wars—endorsing gay rights, affirmative action, and access to early-term abortions—so did the Court. "The reason the Court's economic conservatives won and its cultural conservatives lost is simple. In the arena of politics, economic conservatives were winning and cultural conservatives were losing," writes Mark Tushnet in his new book, *A Court Divided*. Lower courts, by and large, have been similarly strategic in following the election returns, and the few decisions that have challenged deeply felt currents in public opinion—in cases involving gay marriage and the Pledge of Allegiance, for example—have often been reversed by higher courts or by popular initiatives at the state level. By siding with the political winners rather than the political losers, the Supreme Court, under Sandra Day O'Connor's leadership, has represented the popular will more reliably than Bill Frist.

FORTUNATELY, THE CANNINESS of the courts in following public opinion suggests that Republican attacks on judicial independence are unlikely to succeed. Political scientist Gerald N. Rosenberg has examined nine periods in U.S. history when judicial decisions led to meaningful congressional opposition, as measured by the number of bills introduced in the House and Senate attempting to curb the Supreme Court's power.

In three of the nine periods, congressional opposition was so intense that it prompted full judicial retreat: The Jeffersonian Republican Congress's assault on the Marshall Court's ability to control its own agenda between 1802 and 1804; Congress's resistance to the Supreme Court's efforts to constrain Lincoln during the Civil War; and the Democratic Congress's assault on the conservative Court's effort to strike down the New Deal between 1935 and 1937.

In another three periods, less intense opposition led the Court to moderate its views rather than abandon them entirely: the Jacksonian Democrats' resistance to the Marshall Court's nationalizing decisions in the 1820s; Congress's assault on the Warren Court's efforts to defend free speech against the anti-communist investigations between 1955 and 1959; and Congress's response to *Roe* v. *Wade* between 1977 and 1982.

In the final three periods, the Court maintained its independence because congressional opposition was diffuse and weak: the Bryan Democrats' response to the Court's pro-business decisions in the 1890s; the Progressives' response to the Court's striking down minimum-wage and maximum-hour laws in the 1920s; and the Democratic Congress's response to the Warren Court's school prayer and electoral apportionment decisions in the 1960s.

This history suggests that the Court tended to retreat in the face of congressional opposition only when it was genuinely out of step with public opinion. That is not the case today. If the historical pattern holds, the courts are unlikely to wilt before congressional proposals to strip them of jurisdiction over controversial cases. Nor are they likely to be intimidated by DeLay's recent attacks on Justice Anthony Kennedy's "just outrageous" invocation of international law or Representative Jim Sensenbrenner's recent suggestion that Congress create an "office of inspector general for the federal judiciary" to review court decisions. As long as judges are confident that a majority of the country is behind them, they will remain steadfast in the face of congressional bullying.

But we are in a dangerous situation when the people's will is better represented by the Supreme Court than Congress. For most of U.S. history, the Court looked to Capitol Hill as the most reliable representative of the people's constitutional views; if Congress no longer accurately represents the constitutional views of the majority, the Court will have alarmingly little evidence of what those views are, aside from fickle public opinion polls, which are hardly an appropriate basis for judicial decisions. Moreover, Chief Justice William H. Rehnquist will not serve forever, and, when he retires, his successor will be chosen by a president who seems more interested, at the moment, in catering to his social conservative base than in representing the country as a whole. Over the long run, however, majorities in the United States always have their way; and, if they find their political leaders subverting their wishes, they are likely to demand new ones. ■

London Dispatch

Yes, Minister

BY DAVID GOODHART

IT WAS AN unexpectedly dramatic end to one of the grayest British election campaigns in recent history. Tony Blair, freshly reelected in his working-class constituency of Sedgefield in northeast England, was staring straight ahead with a fixed expression. In front of him was one of the constituency's losing protest candidates, Reg Keys, delivering an angry lament for the loss of his son, one of the 88 British soldiers killed in Iraq. "Fighting this campaign has not been easy for me, but I had to do it for my son,

David Goodhart is editor of PROSPECT *magazine and its website, www.prospect-magazine.co.uk.*

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Thomas Keys, killed in Iraq four days short of his twenty-first birthday, sent to war under extremely controversial circumstances," Keys growled. He turned to look directly at the prime minister, fixing him in his gaze. "I hope in my heart that one day the prime minister will be able to say 'sorry' to the families of the bereaved."

Blair's media handlers made a rare slip by allowing the prime minister, with his painfully emotionless expression, to appear directly behind the passionate Keys. The Keys mishap only seemed to crystallize the expert wisdom developing in the days after the election, both among British commentators and their American counterparts. The news of Blair's unprecedented third successive Labour victory was overshadowed by a sharp fall in the party's majority from 167 to 67 seats—the result, many pundits claimed, of Blair's Iraq venture. Indeed, pundits on both the left and the right are now speculating about Blair's battered authority. Jonathan Freedland, of the liberal *Guardian*, wrote that even Labour's win "signal[ed] a kind of defeat," while Matthew D'Ancona of the conservative *Sunday Telegraph* described the election as a "humiliation" for Labour and *The Economist* warned that the party's authority had been undermined.

Yet, despite the hand-wringing over Labour's supposed weak mandate and loss of authority, in reality, the party is in a strong position to enact its third-term agenda. Blair still enjoys a larger majority than most postwar British governments. And, though segments of Labour's left wing rebelled over Iraq and initiatives to raise student tuition fees in the previous Parliament, some of Labour's coming agenda does not require new legislation, reducing the power of left-wing rebels to hold up bills. More important, many of the key new initiatives appear popular with the broader public—including traditional blue-collar Labour voters.

IT WAS PERHAPS inevitable that Labour would lose some seats. Political experts have shown that the mere fact of holding power tends to cost parties in mature democracies about 3 percent of the vote at each election cycle. Although the public recognized that Labour has managed the economy well for two terms, these very successes seemed to encourage voters to nurse grievances about other matters. And Blair clearly suffered from appearing too close to President Bush: A Populus poll found that, by a margin of more than two to one, voters want Blair to distance himself from Bush in the next term.

But, despite Labour's loss of seats—and the pundits' chattering—the 2005 election also underscores the fact that Great Britain remains a strongly center-left country. The Liberal Democrats ran a campaign in many respects to the left of Labour, and Labour and the Lib Dems combined to take 57 percent of the votes cast. Indeed, despite a disciplined campaign and voter anger over Iraq, the opposition Conservatives saw their share of the vote rise only slightly, to 32.3 percent, and the Tories still have fewer seats than Michael Foot's Labour party did at the lowest point in its fortunes against Margaret Thatcher in 1983. Former Tory Minister Francis Maude even admitted, "We have increased our vote by a miserable one percent in two consecutive elections. At this rate, we won't be back in power until 2050."

And, with the Tories now distracted by seeking yet another new leader, after the resignation of 2005 party chief Michael Howard, Blair is well-positioned to implement his domestic agenda. Some of his popular third-term ideas, designed to ensure that increases in state outlays on health and education are spent wisely, do not require new bills. Labour can simply implement the measures, a process over which Blair has significant control. For example, Blair intends to spend the health money effectively by involving more private sector providers in the National Health Service. This idea is controversial among left-wing Labour members of parliament and trade unionists, but, since no new legislation is required to make the shift, they will essentially have no say. What's more, the idea of involving the private sector has proved popular with British patients, who would still receive their treatment for free and would likely face shorter waiting lists for care.

Though other new Labour proposals will require legislation, these plans also enjoy widespread public support, giving Blair significant leverage over Parliament. One such proposal will be reform of what is known as I.B., or "incapacity benefit"—a kind of welfare for roughly 2.7 million people, many of them living in the old industrial areas that suffered from rapid de-industrialization during the Thatcher era. The government estimates that one million of those benefit recipients could be working. Labour will now attempt to move many of them into employment or onto another, cheaper form of government assistance. Like Ronald Reagan's anti-welfare rhetoric in the United States, which resonated with blue-collar Reagan Democrats, polls show that I.B. reform is broadly popular with blue-collar voters in the United Kingdom. The reform also will be overseen by David Blunkett, recalled to the cabinet after resigning six months ago over a sex scandal. Blunkett, who has his roots in the northern industrial town of Sheffield, is popular with Labour's blue-collar base. Even better, the money saved by reforming I.B. will probably be reinvested into public services—which should be popular, as government spending sprees tend to be.

Another major initiative Labour will roll out enjoys significant public support. Labour soon plans to introduce a system of national identification cards, as part of its stepped-up efforts to counter anxiety about terrorism, illegal immigration, and welfare fraud. Though civil liberties advocates detest the idea, opinion polls consistently show that over 80 percent of the population supports it.

AND THEN THERE is Labour's primary weapon of renewal: Finance Minister Gordon Brown, now more popular than Blair with both core Labour supporters and the general public. Indeed, during the election campaign, polls consistently showed that, with Brown as leader, Labour would have won over 6 or 7

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percent more voters. In the election campaign, Blair and Brown, who had squabbled in the past, using surrogates to wage war in the press, kept a united front. Despite speculation to the contrary, that unity is likely to continue; associates close to Brown report that he has interfered relatively little in the post-election cabinet reshuffles, even accepting the elevation of ultra-Blairite Andrew Adonis, disliked by many Brown supporters, to a ministerial post.

Brown is popular in part because he has presided over one of the strongest economic records in modern British history and also because his dour public persona actually appeals to a British populace tired of Blair's sometimes-glib style. What's more, Brown is considered slightly to the left of Blair, and his takeover will help bring disillusioned left-wing Labourites back to the fold. (Long before the election, Blair vowed not to seek a fourth term.) Unlike Blair, Brown is not a convinced liberal interventionist. Brown associates say the finance minister supported Blair in the war out of political necessity, but was hardly enthusiastic about the Iraq invasion.

Combined with the popular policy initiatives, a smooth handover to Brown in two years would bolster Labour's chances of winning two more elections and, in effect, of ruling for an entire generation. By then, nearly 20 years after its first victory in 1997, Labour will have clearly become the natural party of government, having successfully shifted Britain's political center to the left without losing the economic benefits of Thatcher-era reforms. And all the talk of "humiliation" in the 2005 election will have been long forgotten. ■

Gay marriage is good for kids.

Family's Value

BY JONATHAN RAUCH

IN 2003, WHEN a bare majority of the Massachusetts Supreme Judicial Court ordered the state to recognize gay marriages, the three dissenting judges based their opposition largely on children. "It is difficult to imagine a State purpose more important and legitimate than ensuring, promoting, and supporting an optimal social structure within which to bear and raise children," they declared. "[A]t the very least, the marriage statute continues to serve this important State purpose." Nonsense, retorted the four-judge majority: It is the *ban* on marriage that harms children, namely the children of the plaintiffs and of other same-sex parents. "It cannot be rational under our laws, and indeed it is not permitted, to penalize children by depriving them of State benefits because the State disapproves of their parents' sexual orientation," ruled the court. A year ago, in May 2004, the state started marrying same-sex couples, and the country's experiment with legal same-sex marriage began.

Since then, lower courts in New York and California have ruled that same-sex marriage was required by the state's constitution (both decisions are on appeal), and cases are pending in New Jersey and Washington state. More than 40 other states, meanwhile, have preemptively banned same-sex marriage, often by amending their constitutions. Through it all, both sides have claimed to speak for the interests of children. The Massachusetts argument has become the nation's argument.

Advocates who say that gay marriage is just a matter of civil rights are wrong. It certainly is a civil rights issue, just as it is a moral issue; but it is not *only* a civil rights or moral issue. It is also a family policy issue—the most important family policy issue now facing the country. Gay marriage is not a civil right worth having if it will wreck straight marriage or leave millions of children bereft. But it won't. In fact, gay marriage's denial, not its recognition, poses the greater risk to American kids.

THE 2000 CENSUS counted about 160,000 same-sex-couple households with one or more children. Those children, of course, would be directly affected if their parents got married, and there seems to be little dispute that the effects would be positive. Marriage would, to begin with, give their families the additional legal security that marriage provides. The children would have, as Evan Wolfson notes in his book *Why Marriage Matters*, "automatic and undisputed access to the resources, benefits, and entitlements of both parents." Marriage law is rich with provisions ensuring that if one spouse meets with death or disability, the other can carry on—for the good of the kids. Moreover, marriage itself makes couples better off. Marriages are more durable than co-habitations. Many gay couples who have wed in San Francisco and Massachusetts have attested that the act and fact of marriage has deepened and strengthened their bond—sometimes to no one's surprise more than their own. Family stability is very important for children. On average, marriage also makes couples healthier, happier, and wealthier, which must also be good for their children.

In principle, another group of children would also be directly affected, but in a less clear-cut way: *additional* kids, as it were, who might be raised by same-sex parents as a result of the legalization of same-sex marriage. It seems plausible, after all, that same-sex marriage would reduce the legal and social obstacles to same-sex parenting, and so same-sex parenting might well become more common.

Is that good, bad, or neither? That depends on how good same-sex parenting is for children, and on what the children's real-world alternative would be. The dozens of stud-

Jonathan Rauch, a writer in residence at the Brookings Institution, is the author of GAY MARRIAGE: WHY IT IS GOOD FOR GAYS, GOOD FOR STRAIGHTS, AND GOOD FOR AMERICA.

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ies of same-sex parenting to date have found no evidence that children raised by same-sex couples fare worse, on average, than other children. Same-sex parents may not be a first choice, other things being equal. But other things are rarely equal. Most children come to same-sex couples not from loving opposite-sex homes but from single-parent homes, broken heterosexual marriages or relationships, foster care, foreign or domestic orphanages, or artificial insemination. If they were not with same-sex couples, most of these children either would be in more difficult circumstances or would never have been born at all. If same-sex marriage helps them find secure, two-parent homes, that seems a good thing.

STILL, SAME-SEX marriage may send powerful social signals about family structure. Which brings us to the really interesting and perplexing question: How would gay marriage affect the more than 99 percent of children who don't live in same-sex-couple households? To put the question another way: How might homosexual marriage affect heterosexual families?

In academe and among same-sex marriage proponents, the presumption has been that the effects would be insignificant or, on balance, neutral. Same-sex marriage, its advocates say, will not prove to be a big deal for anyone but gay couples. After all, same-sex couples make up only a small percentage of the population. Many Americans do not even know anyone who is openly gay. Thus, after the initial political jolt, straight couples would presumably mostly go on about their lives much as before.

But many people think same-sex marriage would have harmful, even calamitous, effects on children and families—or, as economists would call them, negative externalities: ill consequences befalling people who are not personally involved in the gay-marriage transaction. In Senate testimony last year, Massachusetts Governor Mitt Romney framed the claim this way: "[C]hanging the definition of marriage to include same-sex unions will lead to further far-reaching changes that also would influence the development of our children. For example, school textbooks and classroom instruction may be required to assert absolute societal indifference between traditional marriage and same-sex unions. It is inconceivable that promoting absolute indifference between heterosexual and homosexual unions would not significantly affect child development, family dynamics, and societal structures."

Why? The best version of the argument reasons that same-sex marriage would put opposite-sex and same-sex unions on equal legal footing. This might benefit gay couples and their kids, but it would also signal the law's indifference to family structure—that there is nothing special about families consisting of husband and wife (and thus, often, father and mother). For the law to lend its prestige and muscle to the proposition that mother-father families are interchangeable with other arrangements would hasten the de-norming of the traditional family. It would, the argument goes, further erode the status of the core family structure, even as the United States faces a widespread problem with fatherlessness and single parenthood.

I think of this as the Gold Seal for Heterosexuals argument. It boils down to the claim that marriage sends powerful legal and cultural messages about social norms and that, by reserving the designation "married" for opposite-sex couples, society bestows a special seal of approval on heterosexual unions, signifying that they remain the ideal family structure. Gay marriage would make it impossible for marriage law to prefer opposite-sex to same-sex couples. The result would be to weaken or even shatter man-woman-children as familial template. The language would no longer have a word specifically for a male-female union, and how can the culture preserve what is not even in its vocabulary?

Many gay-marriage advocates, and some courts (in Massachusetts and, most recently, in California), reject this argument out of hand as discriminatory. They are too hasty. Not all discrimination is irrational or bigoted. The Gold Seal argument does not justify opposition to civil unions and other nonmarital programs for gay couples—in fact, in its strongest and most humane form, it actively supports civil unions as a same-sex alternative that preserves marriage's special cultural status while meeting the needs of gay couples. This view may not be perfectly egalitarian, but neither is it homophobic. Indeed, it has real weight.

BUT WHAT IF the main cultural effect of same-sex marriage were not to signal indifference to family structure, but to signal a preference for marriage over non-marriage? Then the social externalities of gay marriage would be predominantly positive.

It is not true, as some same-sex marriage opponents have often said, that children need a mother and father. Children *have* a mother and father. That is how we get children. What children need is a *married* mother and father. The question is whether gay marriage would improve or damage their prospects.

Getting people to marry is hard. Just having sex is more fun. Just shacking up, as it was once called, is easier. Marriage is under threat, all right. The threat, however, comes not from gay couples who want to get married but from straight couples who either do not get married or do not stay married. A third of American children are born to unmarried parents. The divorce rate has doubled since 1960, and the marriage rate fell 40 percent from 1970 to 2000. Cohabitation rose 72 percent in the 1990s. Twenty-eight percent of young couples aged 18–29 are unmarried. "The future of marriage may depend," as an analysis of that last figure by the Gallup Organization remarks, "on whether young people simply delay marriage or sidestep it altogether." Society generally and children especially have an interest in encouraging these couples to get and stay married.

One way to do that is to signal, legally and culturally, that marriage is not just one of many interchangeable "lifestyles," but the gold standard for committed relation-

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ships. For generations, both law and culture signaled that marriage is the ultimate commitment, uniquely binding and uniquely honored; that everyone could and should aspire to marry; and that marriage is especially important for couples with children. Same-sex marriage may be the first opportunity the country has had in decades to climb back up the slippery slope and say, quite dramatically, that marriage—not co-habitation, not partnership, not civil union, but marriage—is society's first choice. An American gay couple in their eighties got married in Canada in 2003 after 58 years together. Asked why they bothered, one of them replied, "The maximum is getting married." That is a good pro-marriage signal to send.

If you take this view of the cultural message of same-sex marriage, then there may be significant benefits for children, gay and straight alike. Gay children, of course, benefit directly from knowing that their future holds the prospect of marriage, with all the blessings that go with it. Straight children benefit when they look all around and see marriage as the norm. If a child sees that Mr. and Mrs. Smith, the neighbors to the left, are married, and that Mrs. and Mrs. Jones, the neighbors to the right, are married—that sends a positive and reassuring message to children about both the importance of marriage and the stability of their community. Every marriage signals the cultural primacy of marriage and adds to the social capital available to adults and children.

THE CONVERSE IS also true: the fewer the marriages, the weaker the institution. If marriage is not universally available, it cannot be universally expected. Which brings us to the potential negative externalities of *not* having same-sex marriage. If, say, the Constitution were amended to forbid same-sex marriage, three things would happen—none of them good for marriage.

First: Both law and custom would busy themselves setting up new nonmarital structures to accommodate same-sex couples. The innovations would range from full-blown Vermont-style civil unions (marriage in all but name) to halfway-house programs like California's domestic partner program to patchwork corporate "partner benefits." Many existing domestic partner programs, corporate and governmental, are already open to heterosexual couples. Insofar as that pattern continues, we will have set up a whole new structure of non-marriage for heterosexuals.

Even if partner programs could be restricted to gay couples, they would still signal culturally that marriage is just one of many choices on a menu of lifestyle options. Children would grow up learning that some people have marriages, some civil unions, some partnerships, and so on. It is hard to see how that could do marriage any good.

Blocking both same-sex marriage and alternatives like civil unions—as some states are now doing—is even worse, because it will ensure the legal and cultural recognition of co-habitation as the equivalent of marriage. Courts, and eventually politicians, will look at same-sex couples who have been together for ten or 20 years and say, "This couple looks and acts married. They talk the talk and walk the walk. We don't let them marry, but we also surely can't pretend they're just unrelated individuals in the eyes of the law." On the cultural side, every happily unmarried gay couple will be a walking billboard for the joys of co-habitation. And, even in principle, there is no way to exclude heterosexual couples from co-habitation. Over time, the lines between co-habitation and partnership and marriage will become impossible to defend—or even to discern.

Second: By definition, banning same-sex marriage would ensure that all same-sex couples with children raise their kids out of wedlock. Obviously, that is no way to reconnect marriage with child-rearing. Just the opposite: Every parenting gay couple will be an advertisement for the expendability of marriage. After all, how important can marriage be for children if some children's parents are forbidden to marry?

Third, and not least: To most Americans over age 65 or so, same-sex marriage is a contradiction or an abomination; but among Americans under 30, many or most (depending on which poll you consult) see the ban on same-sex marriage as discrimination. For members of this younger generation, nondiscrimination is the polestar in the firmament of values. They do not want to be associated with what they perceive as anti-gay discrimination any more than their parents do with sexism or racism. To brand marriage as the *discriminatory* lifestyle choice risks condemning it to cultural obsolescence. That may seem far-fetched now, but, only a few decades ago, it seemed far-fetched to say that men would shun clubs that exclude women. Indeed, San Francisco's decision last year to grant same-sex marriage licenses was an anti-discrimination protest. Ditto for the granting of licenses in New Paltz, New York. Benton County, Oregon, stopped issuing marriage licenses altogether in March 2004, saying it did not want to be associated with a discriminatory institution.

Here, then, is the problem with the Gold Seal for Heterosexuals argument: not that it is discriminatory, but that it rests on the wrong kind of discrimination. Marriage's health depends far less on society's preference for heterosexuality over homosexuality than on society's preference for marriage over non-marriage, and we must now choose between those two preferences. Because marriage is a unique commitment, society has a powerful stake in preferring it to alternative family arrangements; but discriminating in favor of marriage will not continue to seem fair if millions of American couples are forbidden to marry. And so marital discrimination in favor of heterosexual couples will erode or even end society's ability to discriminate in favor of marriage itself. Textbooks will talk about "unions," and anniversaries will become celebrations of "partnerships." Same-sex marriage opponents who worry about losing our unique word for "male-female union" ought to worry at least as much about losing our unique word for "family." ■

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Explaining 15 years of diminishing violence.

The End of War?

BY GREGG EASTERBROOK

DAILY EXPLOSIONS IN Iraq, massacres in Sudan, the Koreas staring at each other through artillery barrels, a Hobbesian war of all against all in eastern Congo—combat plagues human society as it has, perhaps, since our distant forebears realized that a tree limb could be used as a club. But here is something you would never guess from watching the news: War has entered a cycle of decline. Combat in Iraq and in a few other places is an exception to a significant global trend that has gone nearly unnoticed—namely that, for about 15 years, there have been steadily fewer armed conflicts worldwide. In fact, it is possible that a person's chance of dying because of war has, in the last decade or more, become the lowest in human history.

Five years ago, two academics—Monty Marshall, research director at the Center for Global Policy at George Mason University, and Ted Robert Gurr, a professor of government at the University of Maryland—spent months compiling all available data on the frequency and death toll of twentieth-century combat, expecting to find an ever-worsening ledger of blood and destruction. Instead, they found, after the terrible years of World Wars I and II, a global increase in war from the 1960s through the mid-'80s. But this was followed by a steady, nearly uninterrupted decline beginning in 1991. They also found a steady global rise since the mid-'80s in factors that reduce armed conflict—economic prosperity, free elections, stable central governments, better communication, more "peacemaking institutions," and increased international engagement. Marshall and Gurr, along with Deepa Khosla, published their results as a 2001 report, *Peace and Conflict*, for the Center for International Development and Conflict Management at the University of Maryland. At the time, I remember reading that report and thinking, "Wow, this is one of the hottest things I have ever held in my hands." I expected that evidence of a decline in war would trigger a sensation. Instead it received almost no notice.

"After the first report came out, we wanted to brief some United Nations officials, but everyone at the United Nations just laughed at us. They could not believe war was declining, because this went against political expectations," Marshall says. Of course, 2001 was the year of September 11. But, despite the battles in Afghanistan, the Philippines, and elsewhere that were ignited by Islamist terrorism and the West's response, a second edition of *Peace and Conflict*, published in 2003, showed the total number of wars and armed conflicts continued to decline. A third edition of the study, published last week, shows that, despite the invasion of Iraq and other outbreaks of fighting, the overall decline of war continues. This even as the global population keeps rising, which might be expected to lead to more war, not less.

In his prescient 1989 book, *Retreat from Doomsday*, Ohio State University political scientist John Mueller, in addition to predicting that the Soviet Union was about to collapse—the Berlin Wall fell just after the book was published—declared that great-nation war had become "obsolete" and might never occur again. One reason the Soviet Union was about to collapse, Mueller wrote, was that its leaders had structured Soviet society around the eighteenth-century assumption of endless great-power fighting, but great-power war had become archaic, and no society with war as its organizing principle can endure any longer. So far, this theory has been right on the money. It is worth noting that the first emerging great power of the new century, China, though prone to making threatening statements about Taiwan, spends relatively little on its military.

Last year Mueller published a follow-up book, *The Remnants of War*, which argues that fighting below the level of great-power conflict—small-state wars, civil wars, ethnic combat, and clashes among private armies—is also waning. *Retreat from Doomsday* and *The Remnants of War* are brilliantly original and urgent books. Combat is not an inevitable result of international discord and human malevolence, Mueller believes. War, rather, is "merely an idea"—and a really bad idea, like dueling or slavery. This bad idea "has been grafted onto human existence" and can be excised. Yes, the end of war has been predicted before, prominently by H.G. Wells in 1915, and horrible bloodshed followed. But could the predictions be right this time?

FIRST, THE NUMBERS. The University of Maryland studies find the number of wars and armed conflicts worldwide peaked in 1991 at 51, which may represent the most wars happening simultaneously at any point in history. Since 1991, the number has fallen steadily. There were 26 armed conflicts in 2000 and 25 in 2002, even after the Al Qaeda attack on the United States and the U.S. counterattack against Afghanistan. By 2004, Marshall and Gurr's latest study shows, the number of armed conflicts in the world had declined to 20, even after the invasion of Iraq. All told, there were less than half as many wars in 2004

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as there were in 1991.

Marshall and Gurr also have a second ranking, gauging the magnitude of fighting. This section of the report is more subjective. Everyone agrees that the worst moment for human conflict was World War II; but how to rank, say, the current separatist fighting in Indonesia versus, say, the Algerian war of independence is more speculative. Nevertheless, the *Peace and Conflict* studies name 1991 as the peak post–World War II year for totality of global fighting, giving that year a ranking of 179 on a scale that rates the extent and destructiveness of combat. By 2000, in spite of war in the Balkans and genocide in Rwanda, the number had fallen to 97; by 2002 to 81; and, at the end of 2004, it stood at 65. This suggests the extent and intensity of global combat is now less than half what it was 15 years ago.

How can war be in such decline when evening newscasts are filled with images of carnage? One reason fighting seems to be everywhere is that, with the ubiquity of 24-hour cable news and the Internet, we see many more images of conflict than before. A mere decade ago, the rebellion in Eritrea occurred with almost no world notice; the tirelessly globe-trotting Robert Kaplan wrote of meeting with Eritrean rebels who told him they hoped that at least spy satellites were trained on their region so that someone, somewhere, would know of their struggle. Today, fighting in Iraq, Sudan, and other places is elaborately reported on, with a wealth of visual details supplied by minicams and even camera-enabled cell phones. News organizations must prominently report fighting, of course. But the fact that we now see so many visuals of combat and conflict creates the impression that these problems are increasing: Actually, it is the reporting of the problems that is increasing, while the problems themselves are in decline. Television, especially, likes to emphasize war because pictures of fighting, soldiers, and military hardware are inherently more compelling to viewers than images of, say, water-purification projects. Reports of violence and destruction are rarely balanced with reports about the overwhelming majority of the Earth's population not being harmed.

Mueller calculates that about 200 million people were killed in the twentieth century by warfare, other violent conflicts, and government actions associated with war, such as the Holocaust. About twelve billion people lived during that century, meaning that a person of the twentieth century had a 1 to 2 percent chance of dying as the result of international war, ethnic fighting, or government-run genocide. A 1 to 2 percent chance, Mueller notes, is also an American's lifetime chance of dying in an automobile accident. The risk varies depending on where you live and who you are, of course; Mueller notes that, during the twentieth century, Armenians, Cambodians, Jews, kulaks, and some others had a far higher chance of death by war or government persecution than the global average. Yet, with war now in decline, for the moment men and women worldwide stand in more danger from cars and highways than from war and combat. World Health Organization statistics back this: In 2000, for example, 300,000 people died in combat or for war-related reasons (such as disease or malnutrition caused by war), while 1.2 million worldwide died in traffic accidents. That 300,000 people perished because of war in 2000 is a terrible toll, but it represents just .005 percent of those alive in that year.

This low global risk of death from war probably differs greatly from most of the world's past. In prehistory, tribal and small-group violence may have been endemic. Steven LeBlanc, a Harvard University archeologist, asserts in his 2003 book about the human past, *Constant Battles*, that warfare was a steady feature of primordial society. LeBlanc notes that, when the aboriginal societies of New Guinea were first observed by Europeans in the 1930s, one male in four died by violence; traditional New Guinean society was organized around endless tribal combat. Unremitting warfare characterized much of the history of Europe, the Middle East, and other regions; perhaps one-fifth of the German population died during the Thirty Years War, for instance. Now the world is in a period in which less than one ten-thousandth of its population dies from fighting in a year. The sheer number of people who are *not* being harmed by warfare is without precedent.

NEXT CONSIDER A wonderful fact: Global military spending is also in decline. Stated in current dollars, annual global military spending peaked in 1985, at $1.3 trillion, and has been falling since, to slightly over $1 trillion in 2004, according to the Center for Defense Information, a nonpartisan Washington research organization. Since the global population has risen by one-fifth during this period, military spending might have been expected to rise. Instead, relative to population growth, military spending has declined by a full third. In current dollars, the world spent $260 per capita on arms in 1985 and $167 in 2004.

The striking decline in global military spending has also received no attention from the press, which continues to promote the notion of a world staggering under the weight of instruments of destruction. Only a few nations, most prominently the United States, have increased their defense spending in the last decade. Today, the United States accounts for 44 percent of world military spending; if current trends continue, with many nations reducing defense spending while the United States continues to increase such spending as its military is restructured for new global anti-terrorism and peacekeeping roles, it is not out of the question that, in the future, the United States will spend more on arms and soldiers than the rest of the world combined.

Declining global military spending is exactly what one would expect to find if war itself were in decline. The peak year in global military spending came only shortly before the peak year for wars, 1991. There's an obvious chicken-or-egg question, whether military spending has fallen because wars are rarer or whether wars are rarer because military spending has fallen. Either way, both trend lines point in the right direction. This is an extremely favorable development,

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particularly for the world's poor—the less developing nations squander on arms, the more they can invest in improving daily lives of their citizens.

WHAT IS CAUSING war to decline? The most powerful factor must be the end of the cold war, which has both lowered international tensions and withdrawn U.S. and Soviet support from proxy armies in the developing world. Fighting in poor nations is sustained by outside supplies of arms. To be sure, there remain significant stocks of small arms in the developing world—particularly millions of assault rifles. But, with international arms shipments waning and heavy weapons, such as artillery, becoming harder to obtain in many developing nations, factions in developing-world conflicts are more likely to sue for peace. For example, the long, violent conflict in Angola was sustained by a weird mix of Soviet, American, Cuban, and South African arms shipments to a potpourri of factions. When all these nations stopped supplying arms to the Angolan combatants, the leaders of the factions grudgingly came to the conference table.

During the cold war, Marshall notes, it was common for Westerners to say there was peace because no fighting affected the West. Actually, global conflict rose steadily during the cold war, but could be observed only in the developing world. After the cold war ended, many in the West wrung their hands about a supposed outbreak of "disorder" and ethnic hostilities. Actually, both problems went into decline following the cold war, but only then began to be noticed in the West, with confrontation with the Soviet empire no longer an issue.

Another reason for less war is the rise of peacekeeping. The world spends more every year on peacekeeping, and peacekeeping is turning out to be an excellent investment. Many thousands of U.N., NATO, American, and other soldiers and peacekeeping units now walk the streets in troubled parts of the world, at a cost of at least $3 billion annually. Peacekeeping has not been without its problems; peacekeepers have been accused of paying very young girls for sex in Bosnia and Africa, and NATO bears collective shame for refusing support to the Dutch peacekeeping unit that might have prevented the Srebrenica massacre of 1995. But, overall, peacekeeping is working. Dollar for dollar, it is far more effective at preventing fighting than purchasing complex weapons systems. A recent study from the notoriously gloomy RAND Corporation found that most U.N. peacekeeping efforts have been successful.

Peacekeeping is just one way in which the United Nations has made a significant contribution to the decline of war. American commentators love to disparage the organization in that big cereal-box building on the East River, and, of course, the United Nations has manifold faults. Yet we should not lose track of the fact that the global security system envisioned by the U.N. charter appears to be taking effect. Great-power military tensions are at the lowest level in centuries; wealthy nations are increasingly pressured by international diplomacy not to encourage war by client states; and much of the world respects U.N. guidance. Related to this, the rise in "international engagement," or the involvement of the world community in local disputes, increasingly mitigates against war.

The spread of democracy has made another significant contribution to the decline of war. In 1975, only one-third of the world's nations held true multiparty elections; today two-thirds do, and the proportion continues to rise. In the last two decades, some 80 countries have joined the democratic column, while hardly any moved in the opposite direction. Increasingly, developing-world leaders observe the simple fact that the free nations are the strongest and richest ones, and this creates a powerful argument for the expansion of freedom. Theorists at least as far back as Immanuel Kant have posited that democratic societies would be much less likely to make war than other kinds of states. So far, this has proved true: Democracy-against-democracy fighting has been extremely rare. Prosperity and democracy tend to be mutually reinforcing. Now prosperity is rising in most of the world, amplifying the trend toward freedom. As ever-more nations become democracies, ever-less war can be expected, which is exactly what is being observed.

FOR THE GREAT-POWER nations, the arrival of nuclear deterrence is an obvious factor in the decline of war. The atomic bomb debuted in 1945, and the last great-power fighting, between the United States and China, concluded not long after, in 1953. From 1871 to 1914, Europe enjoyed nearly half a century without war; the current 52-year great-power peace is the longest period without great-power war since the modern state system emerged. Of course, it is possible that nuclear deterrence will backfire and lead to a conflagration beyond imagination in its horrors. But, even at the height of the cold war, the United States and the Soviet Union never seriously contemplated a nuclear exchange. If it didn't happen then, it seems unlikely for the future.

In turn, lack of war among great nations sets an example for the developing world. When the leading nations routinely attacked neighbors or rivals, governments of emerging states dreamed of the day when they, too, could issue orders to armies of conquest. Now that the leading nations rarely use military force—and instead emphasize economic competition—developing countries imitate that model. This makes the global economy more turbulent, but reduces war.

In *The Remnants of War*, Mueller argues that most fighting in the world today happens because many developing nations lack "capable government" that can contain ethnic conflict or prevent terrorist groups, militias, and criminal gangs from operating. Through around 1500, he reminds us, Europe, too, lacked capable government: Criminal gangs and private armies roamed the countryside. As European governments became competent, and as police and courts grew more respected, legitimate government gradually van-

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quished thug elements from most of European life. Mueller thinks this same progression of events is beginning in much of the developing world. Government and civil institutions in India, for example, are becoming more professional and less corrupt—one reason why that highly populous nation is not falling apart, as so many predicted it would. Interstate war is in substantial decline; if civil wars, ethnic strife, and private army fighting also go into decline, war may be ungrafted from the human experience.

IS IT POSSIBLE to believe that war is declining, owing to the spread of enlightenment? This seems the riskiest claim. Human nature has let us down many times before. Some have argued that militarism as a philosophy was destroyed in World War II, when the states that were utterly dedicated to martial organization and violent conquest were not only beaten but reduced to rubble by free nations that initially wanted no part of the fight. World War II did represent the triumph of freedom over militarism. But memories are short: It is unrealistic to suppose that no nation will ever be seduced by militarism again.

Yet the last half-century has seen an increase in great nations acting in an enlightened manner toward one another. Prior to this period, the losing sides in wars were usually punished; consider the Versailles Treaty, whose punitive terms helped set in motion the Nazi takeover of Germany. After World War II, the victors did not punish Germany and Japan, which made reasonably smooth returns to prosperity and acceptance by the family of nations. Following the end of the cold war, the losers—the former Soviet Union and China—have seen their national conditions improve, if fitfully; their reentry into the family of nations has gone reasonably well and has been encouraged, if not actively aided, by their former adversaries. Not punishing the vanquished should diminish the odds of future war, since there are no generations who suffer from the victor's terms, become bitter, and want vengeance.

Antiwar sentiment is only about a century old in Western culture, and Mueller thinks its rise has not been given sufficient due. As recently as the Civil War in the United States and World War I in Europe, it was common to view war as inevitable and to be fatalistic about the power of government to order men to march to their deaths. A spooky number of thinkers even adulated war as a desirable condition. Kant, who loved democracy, nevertheless wrote that war is "sublime" and that "prolonged peace favors the predominance of a mere commercial spirit, and with it a debasing self-interest, cowardice and effeminacy." Alexis De Tocqueville said that war "enlarges the mind of a people." Igor Stravinsky called war "necessary for human progress." In 1895, Oliver Wendell Holmes Jr. told the graduating class of Harvard that one of the highest expressions of honor was "the faith ... which leads a soldier to throw away his life in obedience to a blindly accepted duty."

Around the turn of the twentieth century, a counterview arose—that war is usually absurd. One of the best-selling books of late-nineteenth-century Europe, *Lay Down Your Arms!*, was an antiwar novel. Organized draft resistance in the United Kingdom during World War I was a new force in European politics. England slept during the '30s in part because public antiwar sentiment was intense. By the time the U.S. government abolished the draft at the end of the Vietnam War, there was strong feeling in the United States that families would no longer tolerate being compelled to give up their children for war. Today, that feeling has spread even to Russia, such a short time ago a totalitarian, militaristic state. As average family size has decreased across the Western world, families have invested more in each child; this should discourage militarism. Family size has started to decrease in the developing world, too, so the same dynamic may take effect in poor nations.

There is even a chance that the ascent of economics to its pinnacle position in modern life reduces war. Nations interconnected by trade may be less willing to fight each other: If China and the United States ever fought, both nations might see their economies collapse. It is true that, in the decades leading up to World War I, some thought rising trade would prevent war. But today's circumstances are very different from those of the fin de siècle. Before World War I, great powers still maintained the grand illusion that there could be war without general devastation; World Wars I and II were started by governments that thought they could come out ahead by fighting. Today, no major government appears to believe that war is the best path to nationalistic or monetary profit; trade seems much more promising.

The late economist Julian Simon proposed that, in a knowledge-based economy, people and their brainpower are more important than physical resources, and thus the lives of a country's citizens are worth more than any object that might be seized in war. Simon's was a highly optimistic view—he assumed governments are grounded in reason—and yet there is a chance this vision will be realized. Already, most Western nations have achieved a condition in which citizens' lives possess greater economic value than any place or thing an army might gain by combat. As knowledge-based economics spreads throughout the world, physical resources may mean steadily less, while life means steadily more. That's, well, enlightenment.

In his 1993 book, *A History of Warfare*, the military historian John Keegan recognized the early signs that combat and armed conflict had entered a cycle of decline. War "may well be ceasing to commend itself to human beings as a desirable or productive, let alone rational, means of reconciling their discontents," Keegan wrote. Now there are 15 years of positive developments supporting the idea. Fifteen years is not all that long. Many things could still go badly wrong; there could be ghastly surprises in store. But, for the moment, the trends have never been more auspicious: Swords really are being beaten into plowshares and spears into pruning hooks. The world ought to take notice. ■

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BOOKS & THE ARTS

STANLEY KAUFFMANN ON FILMS

Forte and Piano

A WOMAN SAYS, "I'M ANGRY all the time, and I don't know why." She is the wife of the Los Angeles district attorney, and her remark fixes the mood of **CRASH.** This film is set in L.A., which, as we see, is an angry place. The calm moments seem to be respites from that anger. The screenplay originated with Paul Haggis, who wrote *Million Dollar Baby*, and, as in that overrated picture, he builds on basically familiar material. But Haggis is making his major directorial debut here, and—as was not the case with *Baby*—the directing gives this film stamina. Director Haggis, with blunt power, greatly helps his writing self.

CRASH
(Lions Gate)

LADIES IN LAVENDER
(Roadside Attractions)

Crash has a group of story strands that are not all interwoven—the moments of interweaving are the weakest—and it makes the whole group its protagonist. (Other instances of the same method: *Pulp Fiction* and *Thirteen Conversations About One Thing.*) Haggis's view is that L.A. is steeped in two pungent essences: crime and racism. His characters are Anglos, blacks, Latinos, Chinese, Iranians. They are all perilously close to the boiling point much of the time. If it takes a murder to heat some, a trifling car accident does it for others.

Since little of what goes on here is radically novel, we are soon on guard against boredom. What suppresses it, what holds us, is Haggis's onslaught mode of directing and editing. The key to the film's temper is the title: the major crash in the picture is not of automobiles but of the film and us. Slam after slam, the episodes come at us in fragments that make us watch them as they happen and also make us curious to see the ending. Or endings.

Haggis has helped his cast to acting that is sometimes sweaty, sometimes deep. An LAPD cop, become smoothly angry in the service, likes to be tempted into racist talk and assault. Matt Dillon plays the cop as if no one had ever played an L.A. cop before: he explores instead of repeating. A black television big shot tries to keep intelligently cool when he is hassled by cops but finds himself being shoved emotionally into a pre-Watts corner. Terrence Howard is subtle as this new-age figure. Don Cheadle, always welcome, gives an L.A. detective his familiar air of thoughtfulness under the action. As an Iranian shopkeeper who wants to buy a handgun and is taunted into unexpected use of it, Shaun Toub summons as much anger as can fit on the screen at one time. Sandra Bullock, in the surprisingly small role of the D.A.'s wife, concentrates here on the character instead of herself.

Haggis has made a safe picture. It is familiar enough that it slips easily into our film-watching faculty without any fuss, yet his handling of it—his muscular belief in what he is doing—makes us hope that his next screenplay will be a bit less safe.

An English film called **LADIES IN LAVENDER** almost seems designed, beginning with the title, as a holiday from *Crash* and its siblings. *Ladies* is the writing-directing debut of the actor Charles Dance, familiar since 1985, when he was in *Plenty* with Meryl Streep. He doesn't appear in this film but is invisibly present as a patent admirer of the two leading women, Judi Dench and Maggie Smith.

Dench and Smith were both born in 1934, have been friends almost since they began their careers, and have appeared together before (*Tea With Mussolini*). In Dench's long gallery of roles, two of her strongest performances were as queens—Victoria in *Mrs. Brown*, Elizabeth in *Shakespeare in Love*. Smith has ranged from Desdemona in Olivier's *Othello* and Judith in *The Lonely Passion of Judith Hearne* to a line of droll and dry roles in latter-day comedies. For this scintillating pair, Dance has designed a piece, based on a story by William J. Locke, that is engagingly old-fashioned.

They play two sisters who, in the 1930s, live in a Cornish cottage near the sea. (Well, that's true of any cottage in Cornwall.) Their lives, with their semi-bullying stout housekeeper, are as orderly as one would expect, occasionally ruffled by minor spats. One day they are astonished to see a handsome young man prostrate on the beach below them, cast up by the sea. The very appearance of the young man in this setting with these women is an invitation to the sort of disbelief that promises enjoyment. The invitation is even warmer when, after they get him home and nurse him back to health, they discover that he is Polish and a gifted violinist. (Where exactly he came from and how he ended up on that beach the screenplay never bothers to explain.) In time he becomes acquainted with a beautiful young artist (Natascha McElhone) who happens to be staying nearby, and the sisters watch him happily as his life progresses. The viewer who quarrels with any of this story is in the wrong theater.

The film is old-fashioned because it exists. No one, to use an ever-dubious line, makes films like this anymore. (The last one that I can remember is *The Whales of August*, made in 1987, with Bette Davis and Lillian Gish.) Its basic assumption is that some people really care about actors and acting and will go to a film that affords a chance to enjoy two old favorites.

I must confess to a liking for wrinkles. This is not the result of my own age: I was moved by the face of Celia Johnson—she of *Brief Encounter*—when she turned up, wrinkled, in *The Prime of Miss Jean Brodie* in 1969. I felt that I was becoming more familiar with someone I cared about. Here, in *Ladies*, either without makeup or with makeup that was designed to disappear, are two wonderful wrinkled faces. These women have spent so much of their lives in our company that their faces now make us remember

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how much they have given us and the years it took to do it.

Compliments on their performances would be superfluous. The film was done precisely because they could not be anything less than perfect in these roles. I doubt that Dance did much in the way of directing them. Perhaps he knows the story of the famous old actress who listened patiently at the first rehearsal while an ambitious young director explained every movement of a scene to her, after which she said amiably, "Yes, and then I'll just do that little thing for which the management engaged me." Dench and Smith keep doing their little things all through this film, which makes it a pleasant conspiracy between them and us. ■

Noah Feldman

Ugly Americans

The laws of a war against evil.

THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB
Edited by Karen J. Greenberg and Joshua L. Dratel
(Cambridge University Press, 1,249 pp., $50)

TORTURE AND TRUTH: AMERICA, ABU GHRAIB, AND THE WAR ON TERROR
By Mark Danner
(New York Review Books, 608 pp., $19.95)

I.

THE CANAANITE KING Adoni-bezek has just a single line of dialogue in the Bible, but it is one not easily forgotten. Defeated by the combined forces of the tribes of Judah and Simeon, he is subjected to the ordeal of having his index fingers and great toes cut off. Adoni-bezek's philosophical response is that in his day he himself lopped off the fingers and toes of seventy kings: "As I have done, so God hath requited me." With these last words, the captive king is brought to Jerusalem, where he dies.

Today prisoners of war are protected by the Geneva Conventions—but the principle of reciprocity articulated in the king's reflection on the customs of victors still pervades the laws of war. The assumption that all sides might torture or kill prisoners has given way, at least in theory, to the principle that all sides are reciprocally obligated to treat prisoners of war and civilians under occupation humanely. It is fair to say that this norm of international law grew as much from the mutual interests of belligerents in having their own prisoners of war treated humanely as from any deeply held commitment to the dignity of the person. Otherwise it would be almost impossible to explain the anomaly that, according to the rules of war, the enemy may be killed even while he is fleeing, but if captured must be sheltered, fed, and returned to his home when the war is over. The motivation to frame and to follow the rule is surely the reciprocal concern about what might happen to troops captured by the other side, which lends the fuel of self-interest to the fire of moral principle.

In the wake of September 11, 2001, the principle of reciprocity in the laws of war was dealt a substantial blow. In a series of secret memoranda—some of which have since been leaked or declassified, and collected by Mark Danner and more comprehensively by Karen J. Greenberg and Joshua L. Dratel—government attorneys in the Office of Legal Counsel of the Department of Justice, working closely with the White House, developed a theory of why the Geneva Conventions did not apply to members of Al Qaeda and the Taliban forces whom the United States was already in the process of defeating in Afghanistan. The lawyers advanced a number of creative and often doubtful hypotheses in support of their views, including the suggestion that, since Afghanistan was a failed state, the president could suspend the conventions in a war there. But the core of their theory followed from the accurate observation that the Al Qaeda terrorists (and the Taliban, who harbored them) were not playing by the rules of war, and never would. Al Qaeda was a terrorist organization, rather than a state actor covered by the conventions. Worse, the enemy had broken the model of reciprocal respect for the laws of war. "Al Qaeda members," argued the lawyers, "... hijacked civilian airliners, took hostages, and killed them; and they themselves do not obey the laws of war concerning the protection of the lives of civilians or the means of legitimate combat." It therefore made no sense to follow those laws in fighting the terrorists.

Once it could be argued that the Geneva Conventions did not apply to Al Qaeda and the Taliban, there naturally arose the question of what limits, if any, did apply to American conduct in what the lawyers assumed must be characterized as a war. The United States is a signatory to an international treaty prohibiting torture. In fulfillment of that treaty, Congress passed a statute that defines torture as any act "specifically intended to inflict severe physical or mental pain or suffering," and criminalizes such torture abroad anywhere, anytime. The treaty and those federal laws applied to all citizens and personnel of the United States; so whatever counted as "torture" would ordinarily be subject to prosecution. Fear of such prosecution might restrain intelligence officers or others from engaging in aggressive interrogation techniques that some in the government thought would be valuable in seeking information from captured terrorists.

The government lawyers set out to solve the problem of prior American participation in this humane and prudential arrangement. In order to expand the range of coercive tactics that could law-

Noah Feldman is a professor at New York University School of Law. His new book, DIVIDED BY GOD: AMERICA'S CHURCH-STATE PROBLEM—AND WHAT WE SHOULD DO ABOUT IT, *will be published by Farrar, Straus & Giroux this summer.*

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fully be used against suspected terrorists, they pared down the legal definition of torture to the barest minimum. "Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death," they wrote. "For purely mental pain or suffering to amount to torture ... it must result in significant psychological harm of significant duration, e.g., lasting for months or even years." Cruel, inhuman, or degrading punishment or treatment that fell short of this definition would not be prohibited by the torture treaty or the U.S. torture statute. According to the official interpretation of the American government, then, the gloves were off, so long as the very circumscribed category now delineated as "torture" was avoided.

Not content with this newly expansive approach, the government lawyers also suggested two further justifications for American personnel who might cross the line into prohibited torture. They might be able to argue that their actions were dictated by necessity, and so defend themselves against prosecution by arguing that the law excused their actions in the same way that it would excuse a starving hiker who broke into an abandoned cabin looking for food. (In 1999, the Israeli Supreme Court rejected the view that the necessity defense provides a source of authority to torture, although it preserved the possibility that such a defense might be available at trial to an officer charged with human rights abuses.) Alternatively, it could be argued that neither the torture treaty nor American laws could bind the president when he was exercising his constitutional powers as commander-in-chief leading the United States in war. Never mind that it was Congress that both authorized the president to use force against Al Qaeda and also prohibited torture: once war was under way, went the argument, the Constitution put the president above Congress in conducting it.

Ulysses
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These arguments were astonishing. Absent from them was any serious concern about either the morality of the actions being contemplated or their desirability as a matter of policy. Some of the silence may be blamed on lawyerly obtuseness, derived from the mistaken view that moral and practical questions are beyond the province of law and are best left to the client, in this case the president of the United States. But this explanation misses the moral and practical premises that were smuggled into the arguments of the so-called torture memos just described. In fact, both the realities of the immediate post–September 11 environment and the moral theories being developed at the time are necessary to explain the thought world of these memoranda.

The moral grounding for the position of the government's lawyers was the paramount value of protecting the United States without being constrained by rules that the enemy had flouted. Practically speaking, had the United States been worried that its citizens might be subjected to torture by other signatories to the torture treaty, it would have been extremely unlikely to reduce the definition of torture so drastically. But no such reciprocal fear existed. Americans captured by Al Qaeda or the Taliban had no hope of avoiding mistreatment because of the treaty's protection: they would likely have had their heads cut off or worse. And to the extent that other countries might choose to adopt a similarly restrictive definition of torture, the government's lawyers simply presumed that the overwhelming military might of the United States and the threat of retaliation would scare them out of it.

Ironically, then, the circumstances after September 11 made reciprocity seem irrelevant along two opposite dimensions. On the one hand, the United States was newly understood to be vulnerable to asymmetrical threats from terrorists who ignored the laws of war and engaged in "a new type of warfare—one not contemplated in 1949 when the [Geneva Convention] was framed." On the other, in a unipolar world, there was no nation-state with the strength and the willingness to defy the United States by torturing our citizens, even if the United States were to adopt an asymmetrically minimalist definition of torture. In the judgment of then–White House counsel (now attorney general) Alberto Gonzales, "this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners." Waiving the Geneva Conventions and loosening the ban on torture did not merely seem justifiable. The lawyers also believed that they, and we, could get away with it.

II.

HOW DID THE MEMORANDA translate into practice? This question figures centrally in evaluating the treatment, the interrogation, and sometimes the death of prisoners in Afghanistan, Guantánamo, and elsewhere in the world. But it has assumed even greater significance in light of the revelations of the gross violations of the Geneva Conventions, and in some cases of the ban on torture, that were committed by Americans against Iraqis in the Abu Ghraib prison on the outskirts of Baghdad.

No event since My Lai has so publicly shown American soldiers violating the human dignity of citizens of a foreign country. The humiliation of the Iraqi civilians, not to mention the physical injuries they suffered, including death, are and always will be a national shame for the United States. In the minds of many people, not just in the Arab world, the claims of the United States to moral justification for its invasion and occupation of Iraq were permanently vitiated by what happened in what had been one of Saddam Hussein's worst prisons. The Iraqis, some said, had traded one oppressor for another.

In a democracy, one of the consequences of such a horror being revealed is a debate over responsibility. With the government memoranda leaking around the same time as the pictures from Abu Ghraib, it was natural, and it was necessary, to explore the relationship between the government lawyers' theories and the actions of the military police units in Iraq. That there must be some relationship between the human atrocity in Iraq and the legal atrocity in Washington seemed self-evident to many. Danner, in *Torture and Truth: America, Abu Ghraib, and the War on Terror*, suggests a direct causal connection between the memoranda and the horror. He introduces his collection with several articles that he wrote for *The New York Review of Books* while the torture story was breaking; emphasizing military links between Guantánamo and Abu Ghraib, he argues that "there simply was no clear dividing line" between what was legally authorized at

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Guantánamo but banned in Iraq. Greenberg and Dratel's volume, *The Torture Papers*, which at twice the length contains many more primary documents, makes a similar point by implication in its subtitle, "The Road to Abu Ghraib," even though this book, less political than Danner's, generally—and wisely—lets the documents speak for themselves. The idea of a link has in particular seemed especially convincing to lawyers, who always want to believe that their quiddities matter beyond the courtroom.

Although most of those who argue for a direct link are harsh critics of the Bush administration, at whose feet they wish to lay the responsibility, there is also something reassuring in blaming lawyers for what went wrong. If the problem is with the law, after all, then fixing it can prevent another Abu Ghraib. If it lies elsewhere, in policy or politics or philosophy, we may have to work harder to identify both the causes and the potential long-term solutions.

Neither the Bush administration nor the military has been prepared to acquiesce fully in the claim of a direct connection between the Army's torturers and the government's lawyers. The unclassified executive summary of a recent report issued by a commission led by Naval Inspector General Admiral Albert T. Church III (to be included in a forthcoming volume by Greenberg and Dratel) stakes out the position neatly. First, it maintains that several of the most extreme legal arguments in the memoranda were never adopted by the administration as policy. Although Secretary of Defense Donald Rumsfeld did issue an order to the troops stating that Al Qaeda and Taliban detainees were not to be considered prisoners of war under the Geneva Conventions, the president soon supplemented that order with one specifying that they were nonetheless as a matter of policy to be treated in accordance with the Geneva guidelines, "to the extent appropriate and consistent with military necessity." The Church report assumes that the Geneva Conventions obviously applied in Iraq (in fact the administration has intimated that they would not apply to Al Qaeda in Iraq); accordingly, the Church report implies, the entire legal edifice of the torture memos was legally irrelevant to Abu Ghraib.

Moreover, the Church report continues, the actual abusive treatment of prisoners in Abu Ghraib fell outside the guidelines for interrogation developed in the memoranda and in a subsequent Defense Department working-group report. (Rumsfeld declined to authorize several of the more extreme measures that the working group proposed, except on an individual basis with his personal permission. How often this occurred is classified and unknown.) In particular, sexual humiliation, dog attacks (as opposed to the use of dogs to inspire fright), and all forms of physical violence were prohibited. Finally, argues the Church report, the soldiers in Iraq were bound by the provisions of the Uniform Code of Military Justice, which certainly prohibited cruel and inhumane treatment falling short of torture. Yet the published memoranda essentially ignored the Code, and so cannot have been understood to authorize the military police in Abu Ghraib to act as they did.

When it came to assigning blame, the bowdlerized version of the Church report followed earlier military reports, such as the report of March 2004, commissioned by the Army and prepared by Major General Antonio Taguba, which first reviewed the evidence, in blaming the abuses at Abu Ghraib on the combination of an inadequate command structure and the personal initiative of several reservist military police with prior job experience as guards in domestic American prisons. The subtext of this position is to blame the Bush administration, and Rumsfeld in particular, for sending an inadequate military force to Iraq. Understaffed and undertrained, the military acted in an improvisatory fashion that highlighted the greatest structural weakness of any system based on following commands. Where clear regulations and orders are in place, the U.S. military, including the Reserves, does very well in carrying them out. Where there is little or no guidance, individual soldiers may end up drawing on their civilian experiences.

Pointing the finger at former civilian prison guards, as all the military reports have done, also has the effect of shifting the responsibility for Abu Ghraib onto America's own shadowy prison-industrial complex, where abuses occur with a regularity that is rarely discussed or acknowledged. Seen one way, this assignment of responsibility impugns American practices and values. In the aftermath of the revelations, politicians were quick to assert that what happened in Abu Ghraib was not "the American way," though a closer examination of the role of our prison system might produce the opposite conclusion. Seen from the military's perspective, however, the suggestion is faintly exculpatory. It suggests that the source of the problem lies not in the military, but in the introduction of civilian methods of incarceration under crisis conditions in Iraq.

To the Church report's denial of a connection between the memoranda and Abu Ghraib, two types of answers may be made. One approach accepts the difficulty of finding a smoking gun, but is satisfied with a general association of the memoranda's thought world and the abuses that took place. The torture memos signaled the Bush administration's belief that every possible step, including evading or bending the law, should be taken in order to discover information about terrorist attacks. The administration's famous conflation of the war in Iraq with what its insiders call the GWOT, or global war on terror, makes it likely that in dealing with suspected insurgents in Iraq, military personnel, not to mention the civilian contract interrogators, followed the lead that had been set by the president and secretary of defense and was captured, in snapshot form, in the memoranda. The general who supervised interrogations at Guantánamo visited Iraq in the fall of 2003 and, shocked by the disorganization of Abu Ghraib, proposed that it be "Gitmoized" through the introduction of specific regulations that in fact drew closely on the framework produced by the Defense Department working group. (It is unclear precisely when the Abu Ghraib photographs were taken, but they may well have pre-dated this visit.) On this view, the treatment at Abu Ghraib, intended to "soften up" prisoners so that they would give information, is of a piece with the techniques authorized by the working-group documents, even if it does not fit neatly within their legal categories. Both involved stress positions. Both involved dogs. Sexual humiliation was never explicitly prohibited. The general pattern suffices to prove the point.

Another answer points to an agency almost entirely unmentioned in the Church report: the CIA, which in military parlance falls under the catchall heading of "OGA," or "other governmental agencies." In a careful piece of reasoning that first appeared on the blog "Balkinization," which is frequented by constitutional advocates and law profes-

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sors, Martin Lederman, an eight-year veteran of the Office of Legal Counsel who was not privy to the memos when they were written, has argued that the initial memoranda were drafted not with the military in mind, but with the goal of immunizing CIA agents against prosecution for the use of techniques that would otherwise have amounted to torture. The key to Lederman's argument is that while the government lawyers certainly knew that military personnel would be bound by the Uniform Code of Military Justice, those laws do not restrict the CIA, and the statements of policy that order the military to act as though the Geneva Conventions applied and to treat the detainees humanely do not expressly include the CIA in their ambit. It would follow that the CIA, unlike the military, would be authorized to do anything except violate the U.S. anti-terror statute—which is precisely the statute whose reach the memoranda sought to diminish.

Further support for Lederman's position may be gleaned from a stray bullet point that appears at the end of an unsigned document in Greenberg and Dratel's collection. Recording a conversation among lawyers for various government agencies, it notes that lawyers for the CIA specifically sought clarification from the president for the fact that the policy of applying the Geneva Conventions did not apply to its agents. Ominously, it notes also that lawyers from the Justice and State departments "made no comment." In his written responses to the Senate during his recent confirmation hearings for the post of attorney general, Gonzales acknowledged that the presidential order directing that prisoners be treated in compliance with the Geneva Conventions did not apply to the CIA or other non-military agencies. This belated acknowledgment provides the best evidence yet that Lederman's analysis was correct.

So if the memoranda were aimed at the CIA, then Abu Ghraib may be understood either as a space in which the CIA approach went awry (there were, by all accounts, "OGA" personnel in the prison, though they, too, ought to have been governed by the Geneva Conventions while in Iraq), or as a sideshow that accidentally cast light on the whole question of torture. The really upsetting American actions to be considered would include, on this view, the Guantánamo detentions without hearing, which were subsequently modified by the Supreme Court's decision to require due process. But, more prominently, they would include also renditions to other nations where intelligence services routinely torture; and the CIA's use of techniques as extreme as "waterboarding," in which a prisoner is strapped upside down to a board and immersed in water to simulate drowning. This technique or something like it appears to have been used to interrogate Khalid Shaikh Mohammed, to some effect.

The problem with this CIA-focused line of analysis, of course, is that so far it rests mostly on informed conjecture. It would be a grave mistake to think that the memoranda contained in these volumes, even supplemented by further documents that may come to light, represent the totality of the relevant government evidence on these questions. Plenty of material certainly remains classified, and it will remain so for the foreseeable future, as perhaps some of it should in light of the continuing terrorist threat. We cannot at present answer responsibly the question of the exact consequences of the memoranda by the administration's lawyers. The Office of Legal Counsel has issued a new memorandum with a less restrictive and more legally responsible definition of torture. But that memorandum contains a footnote stating that OLC does not believe that the conclusions of the office's earlier memoranda addressing the treatment of detainees "would be different under the standards set forth in this memorandum." One possible implication is that at least some government officials have already acted on the basis of those early memos, and OLC does not want to leave their actions legally unprotected. In this sense, at least, the damage to the definition of torture may already have been done.

III.

THE IMPOSSIBILITY OF KNOWing all the consequences of the government memoranda makes it all the more urgent to ask the deeper question of what exactly is wrong with their argument from reciprocity—or, more precisely, from the breakdown of the argument from reciprocity that these documents attempt to enact. Law provides one sort of answer to this question, and the ideology of human rights another. Each, in different ways, challenges the idea that the principle of reciprocity lies behind the duty to comply with the laws of war.

The response of the American legal community to the memos has in the first instance been that they are bad law, poorly framed by the standards of the craft. Sifting assiduously through the memoranda, refuting one argument after another, lawyers and legal academics have done much to show the flimsiness of the reasoning. Often the targets are easily hit. The law students in my seminar had no trouble spotting inconsistencies in the memos. One federal court decision cited there, for example, found torture to have occurred when a woman was removed from a ship, interrogated, held incommunicado for months, and threatened with death if she tried to escape—yet the same memos were defining torture to permit treatment virtually indistinguishable from this, and indeed far worse. Another sure loser is the casuistic argument that failure to comply with U.N. Security Council resolutions renders a state "failed" and therefore removes it from the protection of the Geneva Conventions. The most frequent justification for war under international law is that a state, like Iraq, has ignored the Security Council's command. It can hardly be the case that the Geneva Conventions do not apply in an archetypally lawful war.

More broadly, the core of the legal response to the official memoranda is that the United States is not excused from its legal obligations just because the other side has decided not to play by the rules. Even where the Geneva Conventions do not apply—as, for example, to combatants out of uniform—other legal standards must be considered. These include not only the ban on torture or the constitutional prohibition of treatment that shocks the conscience, but also relevant legal procedures for determining who actually is a terrorist and under what conditions such persons may be detained. In this vein, the Supreme Court has required hearings for the Guantánamo detainees, many of whom have already been released. To much of the legal community, the greatest flaw in the torture memos is that they sought to evade the law by finding categories and spaces where no law applied. In so doing, they resisted and ultimately subverted the rule of law itself.

Vindication of the rule of law deserves the support of anyone committed to the possibility of legal justice and a constitutional order of limited government. Going outside the law—or above it—ensures a disrespect for institutions

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and individuals alike, and it comes as no surprise that torture can be a result. But such a criticism of the memoranda is too formalistic, or too general, insofar as it concerns the rule of law as such; and it runs the risk of missing the essentially moral claim on which the memoranda drew, namely that the reason for obeying law is the reciprocal agreement of all sides to be bound, and so the old rules could not apply in a war against the new terrorists. Troubling as this claim might be, it cannot be dismissed out of hand merely by asserting that moral claims cannot justify distortions of legal craft or deviations from the rules.

Imagine that the scenario was the enforcement of the fugitive slave laws of the antebellum United States. Careful lawyers would be able to argue—many did—that the purported immorality of slavery made no difference to the deployment of legal principles. Meanwhile, morally inspired lawyers would go to great lengths to pressure, to massage, and even to distort accepted legal doctrine to try to avoid returning slaves to their Southern masters. Who would be right as a matter of law? The answer turns on the role that morality plays in the American legal system. That role is immense. Even if one believed that there might exist, somewhere in the world, legal systems that strictly separate law from morals, it is hard to look at the great sweep of American law and conclude that ours is one of them. Our constitutional law, certainly, incorporates principles of moral force.

So moral considerations must indeed be a part of the legal debate. And once morality is in the conversation, we cannot simply reject the government memoranda for their attack on the rule of law. We need to acknowledge that the imperative of self-preservation is itself a moral value to which the law is sensitive; and we must ask whether we are convinced by the implicit moral theory of the government's lawyers, which was that the circumstances of the war on terror justified deviation from the bounds of ordinary legal interpretation and practice. To do so we must turn to the human rights arguments deployed against the memoranda, because these arguments rest directly on moral grounds.

The human rights community offers a powerful moral objection to the claim that the enemy's non-reciprocity dissolves our duty to obey the law. The claim is that the Geneva Conventions, or U.S. statutes, or the Constitution, are to be respected not because they are conventional legal agreements between parties, but because they embody the universally true and indefeasible value of human dignity. No matter how the enemy may treat you, he is still a human being, and so are you. From those two inexorable facts, from the fact of his human dignity and the fact of your human dignity, flows a duty of biblical—or, if you prefer, Kantian—weight. It is that he, the enemy, must be treated humanely no matter what the consequences. His lack of reciprocity is, quite simply, morally irrelevant. The principle of non-reciprocity invoked by the government's lawyers represents, say the human rights advocates, a moral mistake, which led to similar moral mistakes at Abu Ghraib.

The argument from human dignity has not been asserted with sufficient clarity in the public debate about the torture memos and Abu Ghraib. There should be nothing disconcerting to Americans about the claim that all humans are created equal and endowed by their Creator with certain inalienable rights. Surely dignity is to be found within the rubric of life, liberty, and the pursuit of happiness. Some may be uncomfortable with the avowedly religious basis of this American belief, preferring the Kantian substitute; but whichever argument would be more powerful with the American public or the Bush administration itself, the fundamental human right to dignity cannot be gainsaid, except by introducing cost-benefit analysis into the discussion.

Yet the human dignity argument does not, alas, settle the matter. Its drawback lies in a different quarter, far away from philosophy. The problem is that such an ideal cannot, as a general rule, be expected to do all the work in the real world of war and national interest, especially when lined up against the powerful human impulse to revenge. That is why the laws of war have historically had to depend on reciprocity, rather than the unilateral adoption of wise moral restraints. Moralists, if they are actually to improve the human world, must also be realists; and moral reflection on war must regard war as it really is, in all its brutality and its appeal to the darker impulses. When the French at Agincourt kill the boys, Shakespeare's Henry V retaliates in kind by killing the French prisoners he has taken, Fluellen's protestations that both actions are expressly against the laws of war notwithstanding. Henry does not act without compunction, but he does avenge his subjects' deaths. Vengeance, too, is a form of reciprocity. Against it, a commitment to acting morally no matter what the other side may do is difficult, almost impossible, to sustain.

IV.

THE LIMITATIONS OF THE LEGAL and the human rights arguments against the torture memoranda suggest a third possibility: that the principle of reciprocity does, in fact, have something to teach us about what was wrong with the worldview of the administration, or of its lawyers. Perhaps the memos did not err in raising the question of whether the terrorists' tactics broke the principle of reciprocity that underlay traditional law-of-war norms. The problem may have been, rather, that the memos gave the wrong answer to this question, mistakenly judging that Al Qaeda's deviation from the laws of war made it prudent for the United States to circumvent them as well.

The first error that the memoranda made was in assuming that only the terrorists and the United States were relevant parties in determining whether reciprocity still gave a reason for rule-following. In fact, reciprocity is almost always more than bilateral. It need not narrowly mean that I follow the agreement that we have reached on the expectation and hope that you will do the same. Reciprocity extends also to my desire to convince other parties, third parties, that agreements are worth keeping, even when such parties might be able to get away with violating them. Just as important, reciprocity includes the proposition that I have an interest to signal that I am the kind of person or entity who keeps agreements in spirit as well as in letter.

The rule of law, understood from this perspective of reciprocal interest in keeping to the rules, is not only a good in itself. It is also a tool for promoting a habit of rule-following that serves the interests of stability. No wonder a propertied bourgeoisie always prefers the rule of law, while autocrats and revolutionaries favor the possibility of bending or breaking the rules when it is expedient. If enough people follow the rules, the custom of doing so may harden into a social norm. But if everyone is potentially what Oliver Wendell Holmes Jr. called a "bad man," constantly weighing the risks of breaking the law against what he can

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gain from breaking it, the rule of law is unlikely to find much traction, and the costs of enforcing compliance will rise drastically. To make any legal system work, most people most of the time need to follow the law without giving it much thought. Moreover, the most salient actor in the system—the state, typically—will always be the most effective promoter of it. If it breaks the law, then it signals that anything goes. If it follows the law, the habit of obedience is encouraged.

It was precisely this richer conception of reciprocity that led the United States during the Cold War to champion international treaties and the rule of international law. The United States perceived it to be in our interest to encourage obedience to treaties that we helped to draft; and it was equally in our interest to condemn our enemies for their deviations. The Geneva Conventions themselves reflected American influence and pressure, and of course the United Nations was also conceived as a creature of Roosevelt's vision of how the United States might lead through a combination of soft influence and hard power. It helped that, during the Cold War, the Soviet bloc existed to provide the threat of someone else capturing our soldiers or torturing our civilians; but the foreign policy realists of the era understood perfectly well that behind the Iron Curtain, legal agreements alone would not necessarily protect our prisoners.

The disappearance of the Soviet threat helped to set the conditions in which the United States could begin to imagine that it could get away with deviating from international law reciprocity with no significant added cost. But this was a profoundly shortsighted view, fundamentally at odds with the Bush administration's own stated objective of holding nations accountable for their actions or those of terrorists whom they might be harboring. In a hastily drafted response to the OLC memorandum on applying the Geneva Conventions in Afghanistan, State Department lawyers pointed out that it could be harmful to American soldiers in future wars to declare the Geneva Conventions irrelevant; but even this formulation fell far short of what needed to be said. The central and crucial point should have been that if the United States aimed to demand accountability with international norms, it had better begin by actively and visibly upholding those norms itself. Whatever the merits of unilateralism in foreign policy, unilateralism in law and morals is incoherent and dangerous.

THERE IS ANOTHER CONSIDERation. In the frenzied days after September 11, when the memoranda were being written, the Bush administration had not yet settled on a policy of combating terror by promoting democracy in the Muslim world. But it should rapidly have become clear that this objective, too, requires special vigilance to the promotion of international legal norms. After all, the purported advantage of democracy from the perspective of the United States lies in the assumption that democracies follow the norms of international good behavior better than monarchies or proletarian dictatorships. Democratization would do the United States no good if new democracies in the Muslim world were to adopt policies of exporting terror against us. The other great appeal of democracy lies in its dependence on the proposition of human equality and universal rights—and that idea, too, can be promoted efficaciously only by a country that respects fundamental rights, including very prominently a right against torture.

It emerges that in these memoranda, as in a broad range of subsequent detention decisions, the Bush administration erred disastrously by its failure to consider the costs of the world's perception that it was acting without concern for the reciprocity inherent in a legal order. Had the administration decided to treat the Guantánamo detainees as prisoners of war, Al Qaeda members could still have been tried for war crimes; but the world would not now see Guantánamo as a symbol of American flouting of international humanitarian law. There would also have been no strong legal objection to repatriating them at will, as there is today.

It is of course possible—though at present unknowable—that under the sort of harsh CIA interrogation that would have been barred by the Geneva Conventions, one or a few Al Qaeda detainees might have disclosed information that saved lives. But a more careful evaluation of who had been brought to Guantánamo, the case-by-case investigations that the Geneva Conventions in fact require for persons whose prisoner-of-war status is unclear, would have spared much, if not all, of the international condemnation that the United States has incurred. What is more, by opening detention facilities to reporters, the United States could have gained enormous leverage in the international press, including in the Arab world.

The important point is that the United States was not invulnerable to the costs of non-compliance by virtue of the collapse of the Soviet bloc. Quite the contrary. The costs of failing to comply were great in light of the objectives that the United States has sought to pursue since September 11. When it came to international law, detention, and interrogation, the Bush administration failed to understand why reciprocity is valuable, even when the immediate enemy is never going to comply. This was not only moral obtuseness. It was also something worse, for the consequentialist (and all strategists are consequentialists): a profound and damaging error of judgment.

THE COSTS OF THE BUSH ADministration's misunderstanding of reciprocity were still higher at Abu Ghraib, which constituted the greatest single blow thus far to the American policy of democratization in the Middle East. We Americans are alarmingly quick to forgive ourselves our prior bad acts when we have begun to turn the moral corner, but it must be remembered that our track record with respect to democracy in most of the Middle East is nothing short of disastrous. Having declared a policy of democratization, we begin far, far behind the line of scrimmage, penalized by the broadly shared and largely accurate perception that our policy has long favored the stability of dictatorship (and the steady oil flow that comes with it) over the uncertainties of democratic self-governance. Many in the Arab world long ago reached the conclusion that our rhetoric never matches our actual practice when it comes to them. That left hopeful Arab moderates, in Iraq and elsewhere, seeking to reassure the skeptics that this time we meant it. Our duty was to give them evidence to show that they were right.

For the short term, at least, Abu Ghraib seriously damaged that objective. It was not simply that Arabs were shocked by the horror of what they saw: repulsive and illegal as the abuses were, Arab audiences know that worse things happen in the prisons of autocrats in their countries and beyond. (The wires on that hooded figure were not, after all, attached to electrodes.) The devastating effect of Abu Ghraib was that to those who had always suspected the United

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States of similar behavior in the past, the ocular proof of what transpired in that prison was confirmation of what they already knew. To the hopeful moderates, the message was simple: we Americans behave as horribly as anybody else when we have absolute power.

What does this mean for the prospect of a successful democracy in Iraq? For one thing, it means that even if a moderately stable, moderately democratic regime emerges there, the United States will get little or no credit for it. Those images are burned too deep into the Iraqi psyche to be soon forgotten, even though they must compete with the many more recent images of Iraqis dying at the hands of suicide bombers. But the public relations effect of Abu Ghraib is only one part of the story, and not the most important. Far more significant is the actual suffering of actual Iraqis in American custody. The United States bears significant responsibility for terrorism deaths in Iraq to the extent that they result from the fact that we invaded with insufficient troops to keep the peace as required of any occupier as a matter of law and morality. But the sins of Abu Ghraib were committed with our own hands, and our responsibility is correspondingly greater.

This harm cannot be undone, and it is part of a broader set of harms that are still happening to Iraqis as a result of the way the United States has conducted its invasion and its occupation. We Americans are under a heavy duty to put an end to those harms by producing security in Iraq so that the democratically elected government can actually govern. The clock is ticking. The benefit to Iraqis of a stable government and freedom from Saddam's yoke will be very great, but it cannot outweigh every possible burden that they could ultimately suffer. The more Iraqis die, the longer insecurity reigns, the harder it will become to justify the invasion on the ground that it left the Iraqi people substantially better off than they would have been under Saddam.

It is a painful if occasionally obscure truth that the rightness or wrongness of our actions is sometimes decided by their consequences. That is why Aristotle raised the possibility that one could not judge a man entirely happy while he still lived: his children's fate would bear on how well he had constructed his life. We do not yet know whether the removal of Saddam—not generally, but in the way it concretely occurred—will have been justified. But we need not sit idly by and watch to see how it comes out. We are under a continuing and heavy duty to try to get things right—by following the rules that we have set, providing security and stability where little now exists, and treating others the way we wish to be treated ourselves. Those who believe that democracy can be established by American force in the absence of American moral example are deluding themselves, and Iraq, and us. ■

Alan Taylor
Cleansings

A Great and Noble Scheme: The Tragic Story of the Expulsion of the French Acadians From Their American Homeland
By John Mack Faragher
(W. W. Norton, 562 pp., $28.95)

Past generations of American schoolchildren were required to read Longfellow's maudlin poem "Evangeline: A Tale of Acadie." It tells of a young and beautiful woman violently separated from her fiancé in 1755, when British troops forcibly deported their people from Acadia (now Nova Scotia). Taken in separate ships to disparate ports in the future United States, the pair spend their long lives in devoted but fruitless striving for reunion. Only at the very end, as a nun and a nurse, does she find him dying in a Philadelphia almshouse. Published in 1847, at the full flower of romantic American nationalism, "Evangeline" casts the British as the exclusive villains while absolving their American colonists of any responsibility for the Acadian deportation. Indeed, Longfellow's Americans welcome the refugees as equals to a land of liberty, tolerance, and opportunity: "After your houses are built, and your fields are yellow with harvests,/No King George of England shall drive you away from your homesteads." Finding a new and better home, the grateful Acadians become Americans exulting in their prosperity and in their new power to defy the tyrants of the old world.

In his new book, the distinguished historian John Mack Faragher returns to the story of Acadian deportation. Of course, the book's title is ironic, drawn from the words of a colonial apologist for a great crime: the dispossession of about eighteen thousand peaceable people punished for their French and Catholic culture during an imperial war between France and Britain to control North America. Faragher shares Longfellow's interest in the trauma of family separation, but the historian emphasizes the American complicity that the poet effaced. Citing the prominence of New Englanders in ousting and replacing the Acadians, Faragher concludes, "It was a Yankee operation." By retelling this tale, he exhorts Americans to acknowledge "the dark side of our past, the evil means [that] men used to pursue the end of continental expansion." In the Acadian expulsion, Faragher detects an original sin that stains our national origins: "ethnic cleansing [as] a part of America's founding history." This provocative claim is well calculated to capture media attention, to sell books, and to outrage conservatives.

But Faragher's sensational claim casts more heat than light on a complicated tragedy. He defines "ethnic cleansing" as "the purposeful campaign of one ethnic or religious group to remove, by violent and terror-inspiring means, the civilian population of another ethnic or religious group from a certain geographic area." By characterizing the Acadian expulsion as "an early example of ethnic cleansing," Faragher strains to credit the British colonists of 1755 with inventing (or at least refining) this grim practice. Of course, anyone familiar with ancient or medieval history will consider an expulsion of 1755 as a pretty late and relatively tame example of the violent and systematic dislocation of one people by another. Such atrocities have been all too common for thousands of years. (The Old Testament affirms that neither the Canaanites nor the Israelites would concede novelty in suffering or in inflicting expulsion to the Acadians and the British.)

More often, Faragher retreats to the

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sufficiently grandiose claim that "before 1755, nothing like it had been seen in North America." But he later contradicts that assertion by conceding that the "strategy of removing one people and replacing them with another ... [was] a characteristic feature during the brutal religious wars of the sixteenth and seventeenth centuries." Indeed, he mentions the expulsion of Spanish settlers from Jamaica by the English in 1655, a century before the Acadian dispossession. He also notes that in 1666 the French similarly treated the English colonists of St. Kitts, another Caribbean island. But he regards these seventeenth-century cases as blips in the historical record, minor exceptions that should not deny innovation to the Acadian expulsion of 1755. In his conclusion Faragher reiterates the sweeping claim that "the removal of the Acadians was the first episode of state-sponsored ethnic cleansing in North American history."

IN FACT, FOR MORE THAN TWO PRECEDING centuries the European invasion of North America had wrought the massive destruction of native peoples and their replacement in coastal districts by colonists. Although new diseases did much of the grim work, raiding to make slaves accelerated the destruction, which colonial settlement completed in some locales. Among dozens of examples, consider the fate of the Pequot Indians in southern New England. In 1637 the Puritan colonists systematically destroyed the Pequot villages, killing hundreds of Indians and selling most of the survivors into slavery, opening their lands to settlement. All of this was sponsored by the colonial governments of New England. The various European colonizers also butchered and dispossessed one another in violent competition for prime settlements. In 1565, for example, several hundred French Protestants, known as Huguenots, settled on the Atlantic coast of Florida, but this quickly invited their massacre by Spanish Catholics (acting on crown authority), who then planted their own forts and missions.

Both the Pequot and the Florida episodes fit every element of Faragher's definition of ethnic cleansing: purposeful "state-sponsored" campaigns employing terror to replace one ethnic and religious group with another. Indeed, those two episodes provide a better fit than the expulsion of 1755, where the British tried (albeit clumsily) to minimize the loss of Acadian life. Oddly, Faragher claims that "mass murder ... became a consistent feature in episodes of ethnic cleansing only after the introduction of industrial weaponry" during the late nineteenth century. Tell that to the Pequots or the Huguenots. By treating Acadian expulsion as the original American case of ethnic cleansing, Faragher unwittingly obscures prior centuries of bloody, tragic precedent. And by invoking an anachronistic exaggeration, he distracts from the powerful and tragic story that he narrates with such dramatic flair.

At the start, Faragher insists that his book is "premised on the conviction that American history is not exceptional." He claims to challenge the wishful thinking that Americans have escaped from the tragedy, the violence, and the injustice that accompanies human endeavor elsewhere. In an abundant continent at an ocean's distance from Europe, Americans long felt safely removed from the horrors of the old world of aristocratic and war-torn Europe. We like to think of ourselves as escaped from man's fallen history. Restored to an American Eden, we are new Adams and Eves: innocents freed from the distorting constraints of tradition and from the moral ambiguities of conflict. In our popular stories, strife and injustice are aberrations produced by intruders and deviants, the serpents in our garden. We fend off these enemies, persuaded that our motives are always pure.

This mythic framework is so ubiquitous and powerful that escaping it is more easily announced than accomplished. Think, for example, of Kevin Costner's film *Dances With Wolves*, which challenges the classic Westerns by rendering the Lakota Indians as noble heroes while casting cavalrymen as vicious villains. But of course Costner simply reproduced the governing polarity by reassigning who got to wear the white hats of good and who donned the black hats of evil.

AND SO IT IS WITH *A GREAT and Noble Scheme*. Instead of discarding the exceptional framework of the new Eden, Faragher reproduces it in a mirrored inversion. Striving to write a great American story, he offers a morality play, a stark melodrama with sharply drawn villains and heroes. During the late nineteenth century, the New England historian Francis Parkman demonized the Acadians as ignorant peasants easily manipulated by bigoted priests into assisting brutal savages preying upon the noble Protestants of colonial America. Now Parkman's heroes become Faragher's villains, as greedy and bigoted New Englanders prey upon the peaceful and fun-loving Acadians. This new history pits the Acadians, "who attempted to foster peace," against "those who out of hatred and fear, jealousy and greed, pursued the ways of war." It was the Acadians who once possessed the true American Eden, Faragher insists, while modern Americans are heirs to the Puritan snakes who destroyed it.

Faragher depicts Acadia (or l'Acadie) as a lost multicultural paradise. During the early seventeenth century, French fur traders established trading posts on the peninsula between the Atlantic Ocean and the Bay of Fundy. The natives were Míkmaq (or Mikmaw) Indians, skilled hunters who delighted in bartering animal pelts for the metal manufactures brought from France. Faragher emphasizes that the region's name began either with the French as "Arcadia," after a mythic region associated with a golden age of peace and prosperity in ancient Greece, or with a Míkmaq word that meant "place of abundance." Best of all, Acadia merged the two compatible concepts "as a result of the intercultural conversations between Mikmaw hunters and French traders." The premier French trading post featured a genteel club of gourmands, "*L'Ordre de Bon-Temps*," which, Faragher insists, also reflected Míkmaq traditional feasting: "What was truly distinctive about l'Acadie was this kind of mutual accommodation."

By establishing a "trusting relationship" and economic synergy, the traders and the Indians facilitated a small and peaceful settlement by French peasants, beginning in 1636. As hunters and fishers, the Míkmaqs easily shared their land with prospering farmers, who produced a surplus for cross-cultural trade. Exchange led to warm friendships, and a common patois, and frequently to intermarriage and mixed-blood children. Those synergies transformed French peasants into a new people, the Acadians, with a composite culture: "It may not be too much to assume that they also began to think and feel Mikmaw." Here, Faragher implies, were the true Americans.

Unlike their contemporaries, the English colonists who cheated and devastated the Indians to the south, the Acadians forged with the Míkmaqs "an ethnic accord that was exceptional in the colonial

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settlement of early North America." If only, Faragher laments, that accord had become the continental norm. Alas, he concludes, "the record of friendly interethnic relations in l'Acadie contrasts sharply with the dismal history of violence and dispossession in neighboring New England."

To explain that difference, most historians emphasize that the English emigrants to New England came in much greater numbers: twenty-three thousand by 1650, compared with only two hundred Acadians. Larger numbers gave New Englanders the means and the motive to dispossess the local Indians. In contrast, the small Acadian numbers put relatively little pressure on Míkmaq land, and only a fool would provoke a fight with more numerous Indians. But Faragher prefers to emphasize a cultural difference, asserting that the French innately expressed a greater "sympathy and sociability" for Indians. True enough, but elsewhere in North America that culture did not inhibit French efforts to destroy Indians who refused to cooperate, such as the Sac and Fox peoples of the Great Lakes or the Natchez and Chickasaws of the lower Mississippi Valley.

HARMONY WITH THE MÍKmaqs richly benefited the Acadians, who married early, raised many healthy children, and achieved "a more peaceful and prosperous life" than their oppressed ancestors had known in feudal France. From the initial settlement at Port Royal (in today's Annapolis Valley), the proliferating Acadians extended their farms northward, exploiting fertile marshes and meadows along the Bay of Fundy at Minas, Pisiquid, Cobequid, Chignecto, and Beaubassin. The thriving farms produced bumper crops of wheat and sustained large herds of fat cattle. "Their diet was rich in protein and fat as well as stoneground whole grains, and included plenty of cabbage, turnips, and fresh fruit and vegetables in season," Faragher observes.

Despite the expansion, relations with the Indians remained good because the Acadians occupied lowlands of scant value to the natives, who preferred the interior. Their farms generated surplus bread and beef to help feed their Míkmaq neighbors, sustaining good relations. And, since French officials were few and external commerce was limited, the Acadians developed remarkably egalitarian communities, especially in the new settlements remote from Port Royal. Distance and relative equality rendered the Acadians notoriously independent of any authority that demanded any inconvenience. Defying French officials, the Acadian farmers readily traded their surplus crops to smugglers from New England, who offered the best prices. With sly wit, the Acadians referred to the New England merchants as "*nos amis les ennemis*." A French governor tersely complained that the Acadians were "not accustomed to obey their superiors."

Trading as they pleased and rarely paying tax or tithe, the Acadians achieved the peasant's paradise. Faragher lovingly describes a bucolic world that we have lost, a rural utopia of cooperative labor, abundant leisure, communal festivity, and general good times for all. No one in North America lived or loved better than the singing and dancing peasants of Faragher's Acadia. But no paradise can last in this world. When a Hollywood director films Faragher's story, his camera will cut away from the peasant festival to reveal an ominous New England warship in the background. Suddenly cannon fire will silence the happy fiddling. For in 1658, 1690, and 1696, New England troops came to loot and burn, to ransack and ruin what the Acadians had painstakingly created. "New England's religious certitude would provide effective cover for a good deal of gratuitous violence and pillage," Faragher concludes.

The Acadians paid dearly for the bloody raids inflicted on New England's settlements by the French and Indians based in the St. Lawrence Valley in Canada. Devastated by those raids, the Protestant colonists of New England developed a passionate hatred for all French Catholics as minions of the Antichrist. Frustrated in their attempts to strike back against Canada, the New Englanders sought an easier vengeance on the vulnerable Acadians living along a nearby coast. Although the Acadians had done little to help the raids against New England, they became scapegoats as the nearest and the weakest of French Catholics.

By depicting the New Englanders as simply monstrous for smiting the innocent Acadians, Faragher seems a little naïve about the psychology of war. For defeat, loss, anger, and frustration created irresistible popular pressures on New England's leaders to do something violent against any French within reach. Perhaps then, those leaders reasoned, the French king would restrain his governor in Canada. The logic was cruel, but so was the slaughter and the captivity of the farm families of New England.

In 1713 a peace treaty awarded Acadia to the British empire. In British parlance, the capital became Annapolis Royal and the colony became Nova Scotia—but the overwhelming majority of the inhabitants remained Acadians, who cited the treaty's vague promise that they could retain their lands and their religion. French officials tried to remove the Acadians to strengthen their new fortified settlement at Louisbourg on Cape Breton Island, but they preferred the greater comforts and peace of their well-established farms. The most ideological of British officials longed to oust the Acadians from a conviction that French Catholics could never become loyal subjects to a Protestant king. But more pragmatic officials prevailed, for they lacked sufficient Protestant colonists willing to supplant the Acadians, whose farms provided essential provisions for the garrison and officials at Annapolis Royal. Moreover, a forcible removal would require many more troops and far more money than the British Empire could then afford.

Making the best of a sobering reality, Nova Scotia's officials tried to convert the Acadians into loyal subjects by pressing them to take an unconditional oath of allegiance to their British sovereign. Such an oath would obligate them to serve in the provincial militia against both the French and the Míkmaqs. Appalled at the prospect of fighting their cultural kin, both French and Indian, the Acadians stubbornly repelled the British pressure. Crafting a cunning compromise, they obliged the Nova Scotia officials to accept a limited oath of allegiance that committed the Acadians only to neutrality in the event of war. "Born on the boundaries of empire," Faragher writes, "the Acadians

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considered themselves to be a distinct people with distinct political rights, including the right to be exempted from the struggle between the British and the French."

DURING THE 1720S AND 1730S, neutrality preserved their peace and prosperity, but in the long run that neutrality rendered them dangerously suspect to both sides in the increasingly violent struggle for continental domination. Grimmer times came in 1744, when the French and British renewed war and increased their demands on the Indians and Acadians living in the buffer zone between Louisbourg and Annapolis Royal. With Míkmaq support, French soldiers raided deep into Nova Scotia to besiege Annapolis Royal. Although the French soon retreated, the British officials denounced the Acadians for provisioning the raiders and, in a few cases, for joining them. With good cause, most of the Acadians countered that they had remained neutral, giving up provisions only under duress imposed by menacing French soldiers and Míkmaq warriors.

Even so, British officials could reasonably conclude that neutral Acadian farms provided essential cover and sustenance whenever the French chose to attack. And French agents and priests cynically exploited the Acadian neutrality to alienate that people from the British. During the 1740s, William Shirley, the royal governor of Massachusetts, became the most vociferous champion of dispossessing and removing the Acadians. After a treaty restored peace in 1748, the imperial government instead chose, at great cost, to erect a fortified settlement at Halifax on the Atlantic coast of Nova Scotia. To sustain that military base, the British subsidized the transportation to Halifax of thousands of Protestant colonists, mostly demobilized soldiers and sailors and their families. The British meant both the new settlers and the fortifications to cow the Acadians, inducing them to accept a complete oath of allegiance. But the Acadians remained adamant in their neutrality.

More expensive than effective, the new settlements around Halifax invited Míkmaq attacks, which Shirley blamed on Acadian collaboration. His counterpart in Nova Scotia, Lieutenant Colonel Charles Lawrence, was equally eager to oust the Acadians. During the early 1750s, the French exacerbated tensions by reclaiming part of Acadia and building a provocative frontier fort named Beausejour near the Acadian settlement of Beaubassin. With imperial authorization, Shirley and Lawrence organized an army, primarily recruited in New England, to renew the frontier war with France. Commanded by Colonel Robert Monckton, a British regular, and by Colonel John Winslow of Massachusetts, that army assaulted and captured Fort Beausejour during the summer of 1755.

THAT VICTORY, AND THE AVAILable troops, enabled Shirley and Lawrence at last to activate their scheme to expel the Acadians. In justification, the two governors insisted that only removal could prevent the Acadians from assisting an anticipated French counterattack from Louisbourg. Following a systematic plan carefully prepared by Charles Morris, a New England surveyor and militia officer, Monckton and Winslow invited the Acadian men to gather at their parish churches for important meetings. Expecting only renewed hectoring to take a sweeping oath of allegiance, many men turned up, confident in their ability again to refuse. Instead troops surrounded the churches, taking the men hostage. With the men as bait, the soldiers drew most of their women and children onto transport ships from New England. Some Acadians died resisting arrest. Although the dragnet took away some seven thousand Acadians, another eleven thousand probably escaped, but only by fleeing to miserable refugee camps within the French lines.

Both the transported and the escaped Acadians lost their farms, their livestock, and most of their personal property, confiscated by the Yankee soldiers and sailors without compensation. In addition to the immediate plunder, many of those Yankees would return after the war to claim the confiscated farms. Refuting Longfellow's myth, Faragher concludes, "The material interest of Winslow and his troops in the expulsion of the Acadians was a culmination of the critical role played by New Englanders in the history of l'Acadie."

The chaotic embarkation separated many families onto distinct ships bound for various seaports in British America. By design, their captors dispersed the Acadians in relatively small groups from Massachusetts to Georgia, as a security measure to prevent their rallying in large numbers to make trouble or to attempt a return to Nova Scotia. About a thousand of the transported died at sea. The survivors were dumped as paupers on colonial governments, which were none too happy about the financial burden. To reduce costs, colonial leaders further disrupted families by putting out Acadian children to work on scattered farms. In Massachusetts, the exiles protested, "Had we the power to choose, we would prefer to give up our bodies and souls rather than be separated from our children."

In 1755, Lawrence celebrated "that happy, tho' expensive" measure "of extirpating those perfidious Wretches, the French Neutrals." But his celebration proved premature, as many refugee Acadians within the French lines joined Míkmaqs to return in war parties, striking at British troops and settlements in Nova Scotia. This brutal guerrilla warfare invited wider British reprisals, which ravaged the refugee camps, reducing those Acadians to homeless starvation. Faragher estimates that about eight thousand Acadians, nearly half of their population, died during the war from some combination of dislocation, shipwreck, hunger, exposure, disease, and violence.

By capturing Louisbourg in 1758, Quebec in 1759, and Montreal in 1760, the British conquered Canada, which they secured by the peace treaty of 1763. With further resistance futile, Acadian resistance collapsed. In response to Lawrence's invitation, thousands of Yankee settlers then emigrated to Nova Scotia to occupy farms confiscated from the

Satyr Without Desire

Unable to freeze hair with his curly breath,
to make clouds snap at a window,
to blanch the back of a neck.
The mud caked in his hooves

left no track. His head like a cauliflower,
his unquivering nostrils,
his goat's eyelid.
No one wanted him.

As if every age since the Age of Reason
were the Age of Reason.
And yet I followed him into thickets
where he ignored me.

LEE UPTON

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Acadians. But the newcomers were overmatched in their efforts to repair the complex dike systems essential to Acadian agriculture. To assist them, during the early 1760s the government allowed several hundred Acadian refugees to return, but only as dependent laborers kept in virtual captivity. In 1767 a conciliatory new governor permitted about two thousand Acadians to take the oath of allegiance needed to acquire new farms elsewhere within Nova Scotia.

But most of the Acadians never returned to Nova Scotia, scattering instead to new homes from France to the Falkland Islands. About four thousand resettled within British-occupied Canada, especially along the Miramichi and Saint John rivers in present-day New Brunswick. An equal number gradually emigrated to Louisiana, a former French colony under Spanish rule after 1763. Settling west of New Orleans, they prospered and became known as Cajuns.

FROM THE BEGINNING OF THIS epic story, Faragher starkly contrasts the good Acadians with the bad men of New England, who appear twisted by greed, anger, and Protestant bigotry. Celebrating a French traveler's account of the Acadian gourmands, Faragher observes that "rich in the hearty colors of hedonism, with a hint of bacchanal, his image of the feasting among the colonists of l'Acadie makes a striking contrast to the drab piety of the New England Pilgrims' first Thanksgiving at Plymouth Colony." Offering the moral calculus of a confirmed secularist, Faragher depicts the good French as indulging healthy pleasures denied and denounced by the Puritan killjoys with petty souls, boring lives, and bad diets.

In his general disdain, Faragher miscasts the evangelical Protestantism of colonial New England. Applying a double misnomer, he labels eighteenth-century ministers "Puritan priests." In fact, "Puritan" was a seventeenth-century epithet, and Protestant ministers carefully distinguished their role from the sacred magic ascribed to Catholic priests. Writing of New England in the 1750s, Faragher concludes, "Priests filled their sermons with the virulent rhetoric of anti-Catholicism." Consequently, New England's troops marched for Acadia "to the accompaniment of shrill anti-Catholic cant." This is all true enough, but Faragher treats New Englanders' religion as nothing but anti-Catholic cant focused against a pure and innocent people. By blaming Protestant ministers for whipping the credulous masses of New England into a crusade of hatred, Faragher neatly reverses what Francis Parkman wrote about the Acadians and their priests; but this twist hardly seems to advance our understanding of the tragedy.

Although the New Englanders come off as the worst bigots, Faragher also treats most Catholic priests as arrogant meddlers bent on souring the peasants' good life. Relentlessly secular, Faragher takes special pains to acquit the Acadians of manifesting anything so distasteful as religious zeal: "Catholicism was important, but it was by no means the foundation of Acadian culture." After all, the priests complained that the Acadians were irreverent, drank too much, and fornicated the night away. Yet such complaints were obligatory with priests and ministers almost everywhere during the eighteenth century. Moreover, Faragher confuses morality with piety. For all their supposed high jinks, the Acadians took pains to procure priests and to attend Mass.

In fact, we cannot understand the Acadian tragedy without recognizing the power of religious faith on both sides of the conflict. In the end, the Acadians sacrificed everything material to sustain their spiritual and communal identity as a Catholic people. When threatened with expulsion and dispersal among the British colonists, the Acadians lamented, "Thus we see ourselves on the brink of destruction, liable to be captured and transported to the English islands and to lose our religion." An Acadian woman later recalled that the Yankee soldiers "wanted to make us give up our religion and take theirs, but we did not want to." With leveled guns, the troops tried to compel her neighbors to renounce their faith. "We were on our knees, our faces prostrate against the ground, offering our lives to God while waiting for the firing of the guns."

The troops relented, limiting themselves to plundering the villagers and putting them on the waiting transports. But the Acadians had proved their determination to sacrifice anything if necessary to die in the Catholic faith. Pushed onto ships, they sang a Catholic hymn:

> Let us bear the cross
> Without choice, without regret,
> without complaint,
> Let us bear the cross,
> However bitter and hard.

They begged their captors to take them to French Louisbourg or Quebec, where "we will be able to preserve our religion, which we have very much at heart, and for which we are content to sacrifice our estates." When put to the harshest test, a Catholic identity was the foundation of Acadian culture.

Rather than credit the mobilizing and polarizing power of faith, Faragher blames the tragedy entirely on the manipulation of a few evil men. One villain is the militant French priest Jean-Louis Le Loutre, but the others are British or their colonists, especially Lawrence, Monckton, Morris, Shirley, and Winslow. All were categorical men who "saw the world—right and wrong, black and white, without shading"—but then so does Faragher. "The removal of the Acadians would not be determined by inexorable forces or ancient hatreds, but by the immediate choices made by men," Faragher opines. But this dichotomy offers a false choice, for without those ancient hatreds neither Le Loutre nor Lawrence could have mobilized men and empires to commit their violent acts.

Faragher is certainly right that the Acadians suffered a great tragedy unnecessarily inflicted by stubborn and ambitious colonial officials, who both manifested and exploited religious prejudice and militant patriotism. Exaggerating Acadian innocence and caricaturing New Englanders' beliefs may be essential to persuade American readers to reconsider the horrors of the Acadian expulsion. But I fear that, his high intentions notwithstanding, Faragher sustains our taste for a moral melodrama that inevitably does more harm than good in helping us to understand our dealings with the unfortunate peoples who live beyond the American Eden. ■

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CAMBRIDGE DIARIST

Consequences

SEYMOUR HERSH, WHOSE FAMOUSLY inventive journalism has won him lots of prizes and a new lease on journalistic life as *The New Yorker*'s crusading Beltway gumshoe, has done a laying on of hands with Michael Isikoff, the prime author of the nuclear tidbit that appeared in the May 9 issue of *Newsweek* about the desecration of the Koran by American interrogators at Guantánamo. Hersh this week asserted that Isikoff "does that magic thing that's so obvious but that nobody does: he reads before he writes." Nobody does? It may not come as news to critical readers of Hersh's work that he finds something arresting about the notion that you should read before you write. But what is really risible about his pronouncement is that, in this matter, apparently, reading before writing is precisely what Isikoff did *not* do. He seems never to have read any official document stating that any American official anywhere during the present war against Islamic terrorists abused the sacred book of the Muslims.

AND YET ISIKOFF ALLEGES IN THE first sentence of his 211-word dispatch that there were "internal FBI e-mails" referring to just such disrespectful treatment. Did he read them? He never explicitly claims that he did. So we are left with what *Newsweek* editor Mark Whitaker described—in the limp apology that he worked up two weeks after the Periscope item appeared—as "a knowledgeable U.S. government source" (Isikoff's one and only), who, later, apparently "couldn't be certain about reading of the alleged Qur'an incident in the report we cited." So the big scoop turns out to be a thin reed. And this extraordinary instance of journalistic sloppiness has caused an enormous amount of human suffering and wreaked a diplomatic disaster. The human loss can in part be calculated: At least 17 people were killed in the riots that were incited by Isikoff's hot tip.

THE NEW YORK TIMES REPORTED THAT, by Friday prayers, "thousands of Muslims, from Gaza to Pakistan to Indonesia, emerged . . . to join Afghans in rapidly spreading protests over the reported desecration of a Koran by American interrogators." It would be too much to expect that the American press, and the Western media more generally, would grasp from such frenzy a deep truth about much of the Muslim world, which is that it practices a politics of frenzy, that it is gladly feverish, and that it regularly mistakes excitability for authenticity. Mobs go into the streets at a mere hint from some muezzin, and they may so go anywhere and everywhere in what Stefan Zweig presciently called "this age of simultaneity." Just because "the Muslim street" reacts is not proof that anything has happened. Like Isikoff, the raging crowds in the streets did not read any Pentagon document. But sometimes it is easier to believe what one has not seen.

THE *NEWSWEEK* DELINQUENCY broaches still another lesson that journalists will have to face, however reluctantly: that confidential sources—especially "reliable" confidential sources, which may mean eager sources who are too willing to tell because they have their own personal agendas to serve—can be untrustworthy. The *Newsweek* scandal deserves to exacerbate the debate in the general culture about the legitimacy of anonymous sources that is now burgeoning in American journalism. After all, anonymity is not a promise of veracity. Isn't the identity of a source of a significant (not to mention libelous) story a part of the American public's right to know—the same right that journalists invoke in almost every other situation of controversy? Please recall that, in the continuing controversy about the outing of CIA agent Valerie Plame by an unnamed White House official, there is a liberal clamor demanding to know who told Robert Novak about her. Nobody was hurt in the incident, and what was leaked was not much of a secret in Washington, either. But transparency is demanded. The assumption that the culprit worked in the White House was reason enough for Democrats to go so far as to accuse the unknown leaker of treason. But *Newsweek*'s confidential source for the Periscope canard has been described by Whitaker as a "knowledgeable U.S. government source." Surely there is an overwhelming public interest in knowing who that person is: He or she may have broken the law. About the malevolence of his or her intention in fobbing this inflammatory fakery on a gullible reporter there can be no doubt. Also, how many other times had Isikoff relied on this magical source—now found utterly lacking in reliability—or what is now, by everybody's admission, his nonstory?

THE JOURNALISTIC ESTABLISHMENT IS circling the wagons, of course. Journalists usually blame themselves last and forgive themselves first. They are taking special umbrage at the White House's indignation about *Newsweek*'s iniquity and insisting that this is the pot calling the kettle anti-Muslim. It is certainly true that the Bush administration, at Guantánamo and at Abu Ghraib, is responsible for a good deal of anti-Americanism in the Muslim world (see Noah Feldman, "Ugly Americans," page 23). The Bush administration is not perfectly qualified to give lessons in transparency. But, if Scott McClellan should not be allowed to hide behind Michael Isikoff, neither should Michael Isikoff be allowed to hide behind Scott McClellan. Seventeen people did not die at Guantánamo or Abu Ghraib. The subject this week is not the misdeeds of government. The subject this week is the misdeeds of journalism. No wonder many editors and editorialists want to change the subject.

"WE FEEL BADLY": WITH THOSE INSULTingly wan words, Whitaker thinks that he has wrapped things up. All of *Newsweek*'s penitential protestations notwithstanding, what emerges from this episode is the image of a profession that is complacent, self-righteous, and hopelessly in love with itself. Is this a terrible generalization? Well, there are 17 people who lost their lives because of the state of journalistic practice at a U.S. magazine. When American journalists do not think of themselves as heroes, they think of themselves as victims; but here they are neither. They are—I mean Isikoff and his editors—simply scavengers. **MARTIN PERETZ**

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Whose Health Care Is It Anyway?

FROM THE HOOVER PRESS

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d Policy Solutions

dited by Scott W. Atlas

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In the debate over health-care reform in this country, it seems that one vitally important question is too often left out of the equation: Why should we expect the government to be responsible for providing medical care in the first place?

Food, housing, and clothing are no less basic to our daily lives, and yet citizens don't want government bureaucrats to tell us what kind of cereal we can buy or how much it will cost. When it comes to health care, however, the assumption that government needs to be involved ignores the virtual stranglehold the government already exerts on health-care prices in this country and the failure of that system.

Despite the presence of private insurers in our health-care marketplace, it is the government that to a great extent controls the price of health care. It is bureaucrats who set the reimbursement rates that doctors and health-care providers use to set their pricing, rather than relying on the actual costs and profit margins for their services. The most overt example is in Medicare-covered health services, where bureaucrats set "rates of reimbursement." Some multiple of these Medicare-determined rates also serves as the basis for a significant percentage of payments by private insurers. And **it is the federal control of the health-care dollar that has led to increased costs, delays in patient care, and frustrations for both doctors and patients.**

Christopher Conover of Duke University has estimated the cost of excessive regulation in the health-care market to exceed $339 billion, with a net cost of $169 billion—more than U.S. consumers spend every year on gasoline and oil. His figures show that the cost of the medical legal system alone, including litigation costs, court expenses, and defensive medicine, exceeds $80 billion.

This artificial pricing structure that our government imposes on consumers and doctors is unique to health care, and it has done little to rein in costs or improve care. The real cure for rising health-care costs is direct payment from patient to doctor, eliminating the third-party-payer system that shelters patients from making cost-conscious decisions and results in massive administrative costs and the artificial pricing of medical care. Prices come down when the patient is the customer—not the government or other third-party payer. Patients consider cost when they spend their own money: refractive eye surgery, whole-body-screening CT scans, and other procedures have come down in price when market forces are allowed to operate without third-party interference.

The isolation of the consumer from paying for health care and the inordinate amount of control that government exerts over health-care costs represent a startling exception to the free market system that has served us so well in every other major service industry. This should lead us to ask the question, **on what basis does "government" become the solution for escalating health-care costs?** And why, when it has failed to rein in those costs in the past, should we expect even more government control to be the answer today?

—Scott W. Atlas

Scott W. Atlas is a senior fellow at the Hoover Institution; professor of radiology and chief of neuroradiology at Stanford University Medical School; and editor of Power to the Patient *(Hoover Press, 2005).*

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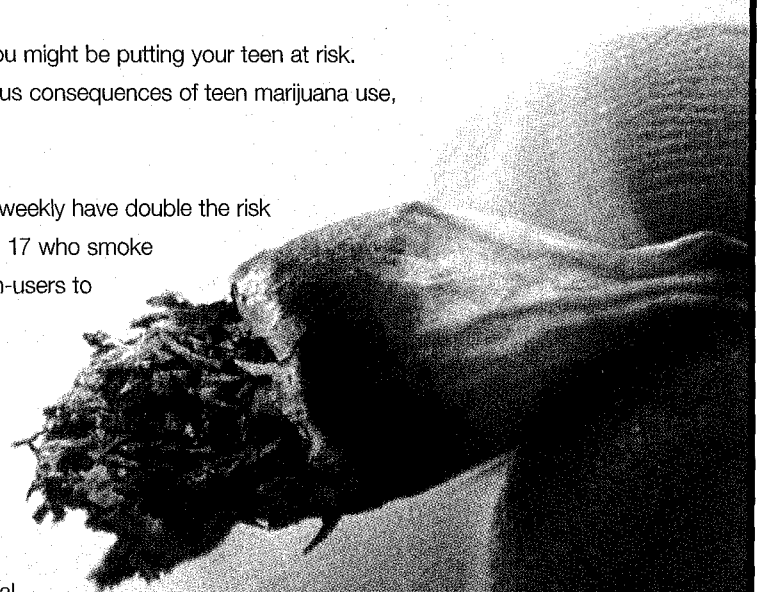
MARIJUANA AND YOUR TEEN'S MENTAL HEALTH

Office of National Drug Control Policy

Depression. Suicidal Thoughts. Schizophrenia.

If you have outdated perceptions about marijuana, you might be putting your teen at risk. New research is giving us better insight into the serious consequences of teen marijuana use, especially how it impacts mental health.



Did you know that young people who use marijuana weekly have double the risk of depression later in life?[1] And that teens aged 12 to 17 who smoke marijuana weekly are three times more likely than non-users to have suicidal thoughts?[2]

And if that's not bad enough, marijuana use in some teens has been linked to increased risk for schizophrenia in later years.[3]

Today's teens are smoking a more potent drug[4] and starting use at increasingly younger ages during crucial brain development years.[5] Still think marijuana's no big deal?

Remember, you are the most important influence in your teen's life when it comes to drugs,[6] so tell your teen the facts about marijuana. Teens who learn about the risks from their parents are less likely to smoke marijuana or use other drugs than teens who don't.

Let your teens know you don't want them using marijuana. Their mental health may depend on it.

Signed,

- *American Psychiatric Association*
- *American Academy of Child and Adolescent Psychiatry*
- *American Society of Addiction Medicine*
- *Asian Community Mental Health Services*
- *Association for Medical Education and Research in Substance Abuse*
- *Institute for Behavior and Health, Inc.*
- *National Asian American Pacific Islander Mental Health Association*
- *National Association of Addiction Treatment Providers*
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[1]Patton, GC et al. Cannabis use and mental health in young people: cohort study. *British Medical Journal*, 325: 1195–1198, 2002. [2]Greenblatt, J. Adolescent self-reported behaviors and their association with marijuana use, Substance Abuse and Mental Health Services Administration (SAMHSA), 1998. [3]Arseneault, L et al. Cannabis use in adolescence and risk for adult psychosis: longitudinal prospective study. *British Medical Journal*, 325: 1212–1213, 2002; Veen, N et al. Cannabis use and age at onset of schizophrenia. *The American Journal of Psychiatry*, 161: 501–506, 2004. [4]*Marijuana Potency Monitoring Project. Report No. 83*, University of Mississippi, 2003. [5]SAMHSA. Trends in Initiation of Substance Use, 2003. [6]SAMHSA. Parental Disapproval of Youths' Substance Abuse, 2002.

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